

Foucault and Feminism:

The Case of Incest

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Declaration

In accordance with Edinburgh University regulation 3.4.7. I hereby declare that this thesis has been composed by myself and that all research undertaken for this thesis has been carried out by me.

Signed:

Date: September 1991

For My Parents

David and Claire Bell

Abstract

This thesis investigates the work of Michel Foucault (1926-1984), and particularly his The History of Sexuality: An Introduction (THS, 1981), within a feminist framework. It considers the usefulness of Foucault on both a general level and on the specific issue of incest. Incest has long been a topic of interest in the social sciences, but more recently its theorisation has been the preserve of feminism. In contrast with earlier sociological interest in the incest prohibition, feminism has relocated incest within the context of sexual violence. Exploring the relationship between the feminist analyses of incest and Foucault's arguments on power, sexuality and discourse, elaborates the subtleties of the feminist position. However, Foucault's work is also challenging to a feminist position, and as a result of the confrontation with his writings, a certain amount of rewriting of the feminist analysis is advocated.

Although the passages in THS that refer to incest are few, incest is placed at a pivotal position in Foucault's schema. This thesis discusses the place Foucault accords incest, and uses his argument as a framework for thinking about the ways in which incest is spoken about and in a reconceptualisation of the place of 'the incest prohibition' in feminist analyses.

The second half of the thesis moves to the field of law in an analysis of the parliamentary debates which have formulated the crime of incest in both English and Scots criminal law. It uses the discussions of the first half of the thesis to interrogate the legal Truth of incest in a detailed analysis of the two sets of debates which led respectively to the 1908 Punishment of Incest Act and the 1986 Incest and Related Offences (Scotland) Act. It is argued that the powerful statement of prohibition contained in law rests upon a mosaic of different ways of constructing incest as a problem. Law is the site at which a number of different knowledges and ways of speaking, each with its corresponding 'truth' of incest, gather in a process of creating the legal Truth of incest. The stark statement of prohibition written into the statutes is the moment at which the heterogeneity of truths is denied and fixed.

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Chapter One

Introduction

This thesis brings together two of the most important influences in recent sociological work on sexuality: feminism and the work of Michel Foucault (1926-84). The topic around which this meeting takes place is incest, long a subject of interest in the social sciences. The recent 'discovery' of incestuous abuse as a social problem, aided by feminist activity and publishing around the issue of sexual violence, has meant that the questions incest raises for social science have altered, and it has been feminist analyses, in the main, which have taken up this challenge.

The feminist analyses of incest take as their point of departure the fact that incest does occur and that its most common form seems to be that of an adult man sexually abusing a female child. The past decade or so has seen the publication of statistical evidence which has been used to support and maintain the focus of the feminist analyses. In light of the statistical evidence and the accounts of survivors of incestuous abuse, the feminist analyses explore questions of power, sexuality and the family. In this introductory chapter, I review the change from an emphasis in sociological work on the incest prohibition to an emphasis on the practice of incest in feminist analyses. This illustrates the sense in which the feminist analyses are asking different questions from what had been orthodox sociological questions around the topic of incest.

The work of Michel Foucault has been very influential in sociological discussions of power and of sexuality. The History of Sexuality: An Introduction (1981) is particularly interesting in the context of this thesis because power and sexuality are very much what feminist analyses have theorised incestuous abuse as 'about'. More than this, this work is a general thesis on the ways in which sex is spoken about, and as such includes the range of ways in which incest has been 'put into discourse', including in sociology. In this chapter, I will introduce Foucault's general arguments, leaving their exploration to later chapters.

Sociology and The Incest Prohibition

Incest has long been a topic of interest to social scientists. However, over the course of the last century or so, most writers have focused their questions on the incest *prohibition* as opposed to the practice of incest.

The common element in the earliest works was 'their unstated assumption that for some recognised reason or another, humanity instituted a prohibition on sex and reproduction among members of the nuclear family.' (Arens, 1987:46). In this mode, Durkheim, in Incest: The Nature and Origin of the Taboo (1898) argued that exogamy, that is, marrying outside the group, was the consequence of the totemism practiced by traditional societies, and studied by several anthropologists at that time. Totemism was the precursor, Durkheim believed, of present religious practices of industrialised societies. It involves a group of people (a tribe) taking and worshipping a class of objects in the material world (such as an animal or a plant) as its totem. Each individual in the totemic group is regarded as having a special relationship to the totem. The totem was thought to be of the same blood as those within the totem group. It was Durkheim's thesis that the totem functioned to maintain group solidarity since the totem is the sign of the group, the group effectively worships themselves. (Later the totem would no longer take a physical shape: that is, it would become thought of as a non-corporeal God.) The totem was sacred, and there was a taboo on shedding the blood of the totem (animal or plant) or harming it in any way. By extension, Durkheim argues, there was a taboo on sexual intercourse with a woman of the same totem group because this would risk coming into contact with her blood which was the blood of the totem.¹

Freud's Totem and Taboo (1913) attempted to bring together the anthropological work on totemism of which Durkheim's was a part, studies of folklore, and his own work on psychoanalysis. This book was a search for the way the incest taboo originated. Psychoanalysis had shown, Freud argues, that the hypothesis of an innate incest prohibition was 'totally untenable' since the 'earliest sexual excitations of youthful human beings are invariably of an incestuous character' (1913:24). Freud drew upon his work with 'Little Hans', which, he argued, had parallels with the anthropological work on totemism. Freud argued that Little Hans had displaced his ambivalent feelings

¹ A later commentator argued that there was no need to pose the intermediary blood taboo: there was a general totem taboo (Lang, 1905, quoted in Freud, 1983).

toward his father - attraction/love, hate (because his father was a competitor for his mother's love) and fear (of his father leaving/dying and of castrating him) - onto horses. This resulted in a desire to see and be near horses, but also a tremendous fear of them. This situation parallels, Freud argued, the relationship of the totemic tribe to the totem which was both feared and revered. Freud argues that the totem can be thought of as representing the father as it did for Little Hans and as totemic groups suggest when they describe the totem as a common ancestor and primal father. Substituting the father for the totem, Freud argues, reveals that the two ordinances of totemism - not to kill the totem and not to have sexual relations with a woman of the same totem - correspond with the two crimes of Oedipus, who according to the Greek legend, unwittingly killed his father and married his mother, and with the two primal wishes of children (see below) (1913:130).

Whilst Freud stated that it was 'unfair to insist on certainty' and 'foolish to aim at exactitude' in the timing and dates of his hypothesis (1913:143) he postulated nonetheless the following explanation of the origin of the incest taboo. At some point in our past, he argues, a patriarchal father cast out his sons so that he would have sole power and sole access to the women of the group. These brothers came together, killed and devoured their father. The violent primal father was the feared and envied model of each of the brothers. In devouring him they accomplished the ultimate identification with him and each one of them acquired a portion of his strength. After exercising the negative part of their ambivalent feelings toward the father, Freud continues, the love for him was felt. The dead father became stronger than the living one had been, such that they practiced 'deferred obedience': what had been prevented by him now became prohibited by the sons themselves. The totem became the father substitute, giving the sons a second chance:

'[The totemic system was a] covenant with their father in which he promised them everything that a childish imagination may expect from a father - protection, care, indulgence - while on their side they undertook to respect his life, that is to say, not to repeat the deed which had brought destruction on their real father.'(1913:144).

Thus the sons revoked their deed by forbidding the killing of the totem, the father substitute, and they renounced its fruits by resigning their claim to the women to whom they had gained access. The incest taboo was thereby instituted.

This work on the origin of the incest prohibition was never accorded much credibility. Freud's work on the (unconscious) incestuous wishes of children and the

implied role of the incest prohibition in the development of the personality, on the other hand, has been enormously influential.² Freud argued that the first object of attachment/love for the child is the mother. Thus incestuous wishes are an integral part of 'normal' development (heterosexual and 'correctly' gendered individuals). Towards the later stages of the phallic phase, in which children gain satisfaction from the genital region, there occurs as part of normal development the Oedipus complex. Freud argued that the boy's Oedipus complex takes the following path: the boy's unconscious desires for the mother are frustrated by his realisation that his father has exclusive access to the mother. The boy child fantasises about killing his father in order to gain access to his mother. However, he fears the father and believes the father has the power to castrate him (as the boy presumes he has done to the mother and to girls). By way of resolution of this complex, Freud suggested, the boy represses his hateful feelings toward the father, and makes the transition to identification with the father. The boy's father is his object of identification, but his mother remains his love-object (1931). For a girl, however, the situation is different, for she does not have to alter the object of her identification in order to follow 'normal' development. Yet she does, Freud assumed, have to make her father her love-object. Freud argued that the girl realises that she does not possess the penis as do boys. On seeing a male genital she will acknowledge her 'fact' of castration and with it her inferior status (1931). At first she thinks she is alone in this fate, but once she realises that this is a feature of femaleness, she begins to accord her mother less status than previously. The 'normal female attitude' results when the girl resolves this complex by taking her father as her object. The motive for turning away from the mother has many components, the strongest being that the girl blames her mother for not giving her a penis, for bringing her into the world female. The father therefore becomes the focus of the female child's sexuality.

The important point to note here is that, for Freud, incestuous wishes are a normal and a crucial part of what he considered normal development. They are initially directed at the mother by both children, and later at the father by the girl. These wishes need to be repressed in order for normal development to take place. The incest prohibition functions to 'direct' the child's both toward heterosexuality and toward an object choice

² Freud's arguments on the Oedipus complex were derived, as was most of his theorising, from observations in his clinical patients. His theory of the Oedipus complex and further developments of it are spread over many of his writings. He discusses it in his case histories (eg. Little Hans and The Wolf Man) as well as elsewhere (eg. Three Essays on the Theory of Sexuality, 1905; Introductory Lectures, 1916). The corresponding complex for girls discussed further in eg. 'Female Sexuality' 1931 and New Introductory Lectures 1933.

outside the family (for an interesting exploration of Freud's incest prohibition and primary 'bisexuality' see Butler 1990:59-78, and see Chapter Four below). But incestuous desires are far from dispensable since they are the basis on which individuals make their later relationships to others.

It is now widely known that Freud's commitment to his theory of incestuous wishes led him to change his mind about his earlier belief in the level of sexual abuse that his patients seemed to be reporting to him. In 1892 Freud suggested that childhood sexual trauma was frequently involved in the etiology of female 'hysteria' (Freud and Breuer, 1955). Later he altered his theory, suggesting instead that he had been confusing their real recollections with their fantasies (Masson, 1985). Thus he reinterpreted his patients' words in accordance with his theorisation of an Oedipus complex.

The work of Levi Strauss, The Elementary Structure of Kinship (1969, first published in French 1949), returns to the question of the origin and functions of the incest prohibition. With his arguments, the incest prohibition was elevated to a gate way position signalling the transition from nature to culture, a position paralleling the importance of the incest prohibition in Freud's theorising of the Oedipus complex. Levi Strauss refused to accept any of the arguments of his day which suggested that the genetic consequences of inbreeding in offspring were a conscious factor in promoting the prohibition. That is, that humankind noted that related couples were more likely to have children with malformations and therefore instituted the incest prohibition.³ He argued that this would require 'eugenic second sight' in individuals (1969:13).

Levi Strauss argued that where there were rules 'we know for certain that the cultural stage has been reached'(1969:8). Everything universal in man, on the other hand, relates to the natural order. Thus, accepting the universality of an incest prohibition, Levi Strauss saw in the incest prohibition a contradictory social fact, a phenomenon which has 'the distinctive characteristics of nature and of its theoretical contradiction, culture'(1969:10). In his exploration of this paradox, he theorised the incest prohibition as 'at once on the threshold of culture, in culture, and in one sense ... culture itself.'(1969:12). It is 'the fundamental step because of which and by which but above all in which the transition from nature to culture is accomplished.'(1969:24).

Levi Strauss' argument rests on the concept of exchange, drawing on Mauss' notion that receiving and reciprocating gifts dominates social intercourse. Several types of

³ A theory that is still held by some commentators (see eg. Ember, 1983).

things are given and received in exchange: food, tools, words, names, rituals. Exchange does not result in accumulation and economic growth, since in traditional exchange no one is supposed to gain: the exchange is not trade but a way of maintaining good relations with others. That is, it maintains solidarity between individuals and groups. Levi Strauss argues that marriages are fundamentally a form of exchange, where the gift is a woman. Marriage is the giving and receiving of women between men. The rule of exogamy and the exchange of women as marriage partners distinguishes and is a fundamental part of a 'culture': it set human beings apart from the animals. Within this schema, therefore, the incest prohibition is understood as a prescription for exchange. He argued that the renunciation of sex within the family and the building of marital alliances outside the family forces social alliances as members of one family make a connection between members of another through marriage. Levi Strauss argued that the incest prohibition should not be thought of as a negative command against sexual relations within the family, but rather, as a imperative to exchange that turned people's attention outwards:

'The prohibition of incest is less a rule of prohibiting marriage with the mother, sister or daughter, than a rule obliging the mother, sister or daughter to be given to others. It is the supreme rule of the gift.'(1969:481).

The exchange of women results in a particular type of relationship. That is, not just a social alliance of reciprocity but a bond of kinship. Exogamy represents a social advantage due to its 'pull to greater cohesion':

'Exchange - and consequently the rule of exogamy which expresses it - has in itself a social value. It provides the means of binding men together, and of superimposing upon the natural links of kinship the henceforth artificial links - artificial in the sense that they are removed from chance encounters or the promiscuity of family life - of alliance governed by rule.'(1969:480).

Later sociologists continued the emphasis on the incest prohibition (as opposed to the occurrence of incest), making their central question: 'how does the incest prohibition function to maintain an ordered society?' Although this form of questioning has been associated with sociological functionalists of the post war period, there is a debt in their work to that of Malinowski (1927). Malinowski argued that the socialisation of the child would become difficult if there were sexual activity between the parents and the children: incest would be 'organisationally dysfunctional'. Incest would lead to the 'upsetting of age distinctions, the mixing up of generations, the disorganisation of sentiments, and a violent exchange of roles.'(1927:251). Thus Malinowski theorised that incest would result in chaos and that the incest prohibition has the role of preventing chaos as a 'functional

prerequisite of society.’(Arens, 1987:50). Later sociologists such as Davis (1965) agreed that the act of incest would produce chaos in the nuclear family: ‘the confusion of status would be phenomenal’ (1965:402).

Focusing on the Western nuclear family, sociological functionalists have argued that the incest prohibition is of great importance for the socialisation of the child. Parsons (1954) made a link between the structural theory of Levi Strauss and Freud’s psychoanalytic theory. Parsons’ argument is that for an individual to practice incest would be to give membership of the lower level structure, the nuclear family, priority over that of the higher level structure, society as a whole. Society requires that individuals (here Parsons seems to be referring only to men) participate in the higher level structure of society, in non-familial roles. The incest prohibition fulfils this need by ‘propelling’ the individual out of the nuclear family of origin and into a new nuclear family but also out of the family of origin and into these non-familial roles.

Parsons argued that the erotic attachment of children to their parents is important in the development of personality and socialisation, but at the same time this same erotic attachment creates problems. Drawing on Freud, Parsons argued that the child is erotically attached to the mother and gave the example of breast feeding as the most obvious example of the child gaining oral-erotic gratification (as well as hunger gratification). A general attachment is necessary for socialisation to take place because the child needs to be attached to the mother in order to take her as its socialising agent. However, because the child has to be socialised and operate as an independent personality, the erotic attachment has to be repressed. The mother, as a socialising agent, must frustrate the child’s erotic attachment to her. The diffuse attachment which has been built through the various specific attachments enables the mother to frustrate the child without losing the attachment altogether. She is then able to teach the child new roles and goals through the socialisation process. Thus incestuous wishes, for Parsons as for Freud, are a necessary part of child’s development. The incest prohibition forces the child to repress and/or displace its incestuous wishes, thereby avoiding the social disruption that the occurrence of incest would cause.

Thus for Parsons, the function of the incest prohibition is to force the erotic attachments of children to the mother, father and each other outside the family. There is a need to make and learn the capacity for having erotic attachments, so that the child will be able to create a family of its own, but there is also the need to repress all erotic

attachments during childhood in order to learn and fulfil non-familial roles in society. In summary,

'For childhood eroticism regardless of the sex of the child the original object is the mother. Once this attachment to the mother has ceased to be useful to the development of the personality it tends, as I have noted, to be repressed altogether. This means that not only is the original object is denied but those 'next in line', that is all other members of the original nuclear family, are tabooed. This in turn, it seems, is an aspect of what I referred to above as the process of self-liquidation of each particular nuclear family.'(1954:113).

Until the 1950s or so, sociological and anthropological works tended, therefore, to focus on the incest prohibition rather than on an analysis of the occurrence of incest. Incest behaviour was presumed to be rare, and outside the remit of these studies, belonging to the realms of psychology or the sociology of deviance. The authors of the first major survey of sexual behaviour in the United States, Kinsey et al, remarked, after the survey revealed a small level of incest, that incest occurred more frequently in the minds of 'clinicians and social workers'(1948:358) than in reality. Their remark continued the notion that incest is rare, but it also revealed where the occurrence of incest was known about. Clinicians, social workers and charities seem to have dealt with cases of incest throughout the period of sociological theorising of the incest prohibition, the most concentrated times seemingly at the turn of the century and in the past twenty years or so (Jeffreys, 1985; Gordon, 1988; Justice and Justice, 1979).

The sociological/anthropological focus on the prohibition has continued, although more work has questioned the inclusivity of the term 'incest taboo' the use of which has meant that differences in what is actually prohibited and what the prohibition signifies have been obscured (see eg. Goody, 1971; Ember, 1983). The occurrence of incest was noted (eg. following Wolf's (1966) work in China, in arguments about 'royal' incest, in psychological settings) but did not lead to a fundamental questioning of the notion of an incest prohibition, but to reconceptualisations and reformulations of how and why the incest prohibition functions (see eg. Young, 1967; Bagley, 1969). The incest prohibition was assumed to be at work, with these anomalies requiring explanation only as anomalies.

It should be stressed that the occurrence of incest does not necessarily and emphatically undermine the sociological/anthropological emphasis on the incest

prohibition. The occurrence of incest and the existence of incestuous desires need not contradict the statement that there is a social rule that one might term 'the incest prohibition'. The fact that murder does occur does not undermine the statement that in our society murder is prohibited. Several of the authors introduced above were aware that incest occurs or is desired. Levi Strauss (1969) hints at the desire men have for their women folk at the end of his work, where he states: 'mankind has always dreamed of seizing and fixing that fleeting moment when it was permissible to believe that the law of exchange could be evaded, that one could gain without losing, enjoy without sharing.' (1969:496-7). Some understood the ritual of breaking the taboo to be important in the social structure they described. In his work on the origins of the incest taboo Freud (1913) suggests that festivals in which the tribe's taboos are deliberately broken are an integral part of totemism. Just as there is often the totemic 'meal' in which the forbidden animal is eaten, so forbidden partners may be taken.

The threat that the occurrence of incest has to theories of the incest prohibition can be articulated in two different ways. First, it can be articulated according to a rate. This is an argument that has been made by some feminist authors. That is, that incest occurs with such frequency that to maintain the notion of an incest prohibition is farcical. Secondly, and more strongly, the threat draws attention to how the breaking of 'the incest prohibition' is conceived in the works on the incest prohibition. The strength of the feminist analysis is in the argument that the 'breaking of the taboo' should not be considered pathological or deviant. As this thesis will discuss, the feminist analyses theorise incest according to normal patterns of behaviour. This draws a contrast with the sociological and anthropological work's dismissal of the occurrence of incest as pathological or perverse, *asocial* behaviour. This is where the occurrence of incest conflicts with the emphasis on the incest prohibition. The issue of whether or not the notion of 'the incest prohibition' can still have any analytic power will be discussed in more detail in Chapter Four.

The Occurrence of Incest: Statistical Evidence

Recent sociological investigations of incest have shifted away from an emphasis on the incest prohibition to an emphasis on the occurrence of incest. Whereas the earlier works down played the occurrence of incest in their theorising of the prohibition, recent

studies have tended to take the form of surveys which attempt to record the extent of the practice of incest in statistical^{form} and understand it as a social problem.

Figures depend upon the way they are produced: the methods used, the sources of information, and the definition of abuse. On this last point, Kelly et al (1991) analyse their data, discussed in detail below, according to different definitions of abuse to illustrate how the definition alters the prevalence rate recorded. Estimating the size of the problem of child sexual abuse encounters great methodological problems due to the nature of the offence (one that is carried out in private, often accompanied by threats if the child tells), the developmental stage of the child (creating language and naming problems), forgetting or 'blocking out' as coping mechanisms, not wanting to tell an unknown researcher, etc. Methods used try to gain as accurate a figure as possible. Ideally the researchers are trained so that they can be sensitive and sympathetic in their questioning. In one study (Russell, 1986), the researchers were matched by age and ethnicity to the respondent, and were paid by the hour rather than by the number of interviews carried out, so that there was an incentive to stay with the respondent. The sources used may also affect the figures reported. University students have been used (eg. by Finkelhor, 1979), but there have also been studies that attempt national prevalence figures, crossing age and class boundaries. Studies can either estimate incidence, ie. the number of new cases occurring in a given time period, giving a rate, or prevalence, ie. the proportion of the population that have been sexually abused in the course of their childhood or lives, giving a percentage. Because of the difficulties, the latter is the more common style of estimate. There are therefore several difficulties in producing accurate statistics on the occurrence of incest. However, this does not mean that a general pattern cannot be detected in the studies which have been carried out (La Fontaine, 1990:45-6).

Several studies of child sexual abuse have taken place in the United States. In his study of 530 female and 266 male college students in New England, Finkelhor (1984) estimated a prevalence of sexual abuse of 19% for females and 9% for males before the age of seventeen. An official report in Canada found statistics of 34% female and 13% male before the age of eighteen (Badgley et al, 1984). The estimate varies according to acts included and age limit used, but nevertheless, the results of these studies show the size of the problem.

In a recent study that interviewed 2626 men and women by telephone, Finkelhor et al (1990) report that 14.6% of women and 9.5% of men responded in the affirmative to

the question: 'When you were a child (elsewhere indicated to be under 18) can you remember having any experience you would now consider sexual abuse - like some one trying or succeeding in having any kind of sexual intercourse with you, or anything like that?' Including other forms of sexual abuse such as oral sex, touching, grabbing, kissing, and exhibitionism, the percentage rose to 27% of women and 16% of men. With the more inclusive definition, 98% of the perpetrators who abused girls and 83% of those who abused boys, were male. Of the women who reported sexual abuse, 7% (N=29) were incestuously abused and 6.5% (N=11) of the boys who reported sexual abuse were incestuously abused (data extrapolated from table 3, 1990:22).

A more detailed picture of the incestuous abuse reported within these findings on child sexual abuse is given in Russell's (1986) study, which interviewed 930 women in San Francisco. Russell defined sexual abuse as

'any kind of exploitative sexual contact or attempted contact that occurred between relatives, no matter how distant the relationship, before the victim turned eighteen years old.'

Russell found 16% of the sample had been abused by a relative before they were eighteen years old, and 4.5% of the sample had been abused by their fathers before that age. The mean age of the victim/survivor was 11.15 years and 85% of the perpetrators were more than five years older than the girl (39% were between twenty and thirty-nine years older). Russell found that although most incestuous abuse was by relatives other than the father, fathers were the second largest group of abusers (the first being uncles). Furthermore, father-daughter incestuous abuse is more likely than other forms to continue for longer periods of time (also, it is more likely that physical abuse will occur, it was the most traumatic form in the women's recollections, and the age disparity is always larger - 89% of the fathers were 20 years or more older than the girl/woman). There were 27 cases of incestuous abuse by the biological father in Russell's sample, 15 by step-fathers, 1 by an adoptive father and 1 by a foster father. Thus the biological fathers were the largest group within the fathers category, but step-fathers were disproportionately represented therein (due to the fact that more of the women had their biological father as a principle figure in their childhood years, fewer had their step-father as such).

In Britain, the heavy demand on telephone help-lines such as incest survivor lines, Rape Crisis Centres and 'Childline', set up in 1986, attest to the high incidence of child sexual and incestuous abuse in Britain. Furthermore the fact that few incidents

uncovered by these helplines or researchers are ever reported to the police authorities mean that the official statistics grossly underestimate the widespread nature of this abuse. Increasing public awareness in Britain is however, reflected in a recent report of the National Society for the Prevention of Cruelty to Children, as children registered as sexually abused has risen dramatically. The number of children under five registered as sexually abused rose from 8% of the total number of children on their register to 25% in 1988 (The Guardian, 5 July 1989). The report also found that girls were more likely to be abused than boys.

In a study of 2019 men and women over the age of fifteen interviewed as part of a MORI survey 12% of the women and 8% of the men reported that they had been sexually abused before the age of sixteen (Baker and Duncan, 1985). Thirteen percent refused to answer. In forty-nine percent of the reports of abuse, the abusers were known to the victim. In fourteen percent of these reports, the abuse was intrafamilial (13% of the boys, N=10 and 14% of the girls, N=16). The definition of sexual abuse used in this survey was as follows:

‘a child under sixteen is sexually abused when another person who is sexually mature involves the child in any activity which the other person expects to lead to their⁴ sexual arousal. This might involve intercourse, touching, exposure of the sexual organs, showing pornographic material or talking about sexual things in an erotic way.’

This definition is a wide one. Of the abuses reported, 51% involved no physical contact, 44% involved physical contact but no sexual intercourse and 5% involved full sexual intercourse.

In a BBC survey reported in La Fontaine (1990), 2041 adults were asked about sexual abuse as children. 3% reported having been abused as a child (49 women and 12 men). The interviewers thought a further 71 respondents were concealing their experiences of sexual abuse. Three times as many as reported having been abused said they knew a child who had been sexually abused. 28% (N=18) of those reporting abuse were abused by a male member of the household, 2% (N=1) by a female member of the household. Of the 51 abusers reported by women (2 women reported 2 different abusers), the relationship of the girl to the abuser was as follows: 16% (N=8) were fathers, 6% step-fathers, 2% grandfathers, 10% brothers or half-brothers, 14% were other male

⁴ It is not clear who ‘their’ refers to: the abuser or the abused. Presumably the authors meant it to mean the abusers.

relatives, 10% were strangers, 12% were neighbours, 12% friends of the family and 14% were other men; 6% were female, relationship unknown or not stated. Of the 13 abusers reported by men (one man accused both his mother and his father): 8% (N=1) was a father, 8% a brother or half-brother, 8% another male relative (not grandfather, or stepfather), 31% were strangers, 8% a neighbour and 8% a friend of the family; 8% was a mother, and 23% a female, relationship unknown or not stated.

Research findings by Kelly, Regan and Burton (1991) are based on a detailed questionnaire completed by 1244 students aged 16 to 21 attending seven Further Education colleges in England, Scotland and Wales. One of the aims of the study was to see how the definition of abuse used affected the prevalence reported. With a broad definition of child sexual abuse which included any form of unwanted sexual event/interaction before the age of 18, 50% of the young women and 25% of the young men reported experiencing at least one such event. On the most strict definition of abuse, that which would be regarded in law and more generally as the most serious forms of sexual abuse, 5% of the young women and 2% of the young men reported that such an incident had occurred before they were 18. Twenty four (2%) of the sample (21 women and 3 men) reported what Kelly et al term 'incestuous abuse', abuse by a parent or sibling. Half of these were abused by fathers/stepfathers (9 women and 3 men), half by siblings (all women students), eleven by brothers, one by a sister. A further four percent were abused by other close family members: grandfathers, uncles, one aunt. In some cases these other relatives were living in the same household as the student at the time of the abuse (1991:4, 11).

The studies discussed here are difficult to summarise as a whole because of the different definitions being used. However, it is useful to attempt a general picture in order to situate the feminist analyses of incest to be discussed in this thesis:

1. Incest, Child Sexual Abuse and Incestuous Abuse. All of these studies are attempts to estimate the sexual abuse of *children*. That is, they are focused on children not adults, although adults are the subjects who are approached for information. None of these statistical studies attempted to record the prevalence of consensual incestuous sexual intercourse either between adults or between children. However, some consensual activities may be reported in the course of data collection, and some incidents may be described as 'pressured' (Kelly et al, 1991). The studies tend to suggest that child sexual abuse is less often by a family member than it is by a non-family member.

2. The Survivors. The statistical studies reviewed here all report that more girls have been sexually abused than boys. There has been some hypothesis that the sexual abuse of boys is somehow 'hidden' (because boys find it more difficult to report their victimisation)⁵. However, there is no evidence at this stage to support such an hypothesis nor to challenge the conclusion that girls experience more sexual abuse than boys. A second point that emerges from these studies is that, although the numbers reporting incestuous abuse are relatively small compared to child sexual abuse as a whole, girls seem more likely to be incestuously abused than boys. That is, a higher proportion of the girls who report sexual abuse have been incestuously abused than boys who report sexual abuse. There seems to be a sex difference in the known/stranger division. Kelly et al (1991) state that girls reported that their abuse was by a relative in 10% (N=66) of the cases where the relationship to the abuser was reported, 46% (N=319) by a person known to her and 44% (N=306) by a stranger. On the other hand, boys reported that the abuse was by a relative in 5% (N=7) of the cases where the relationship to the abuser was reported, 39% (N=50) by a person known to him and by a stranger in 56% (N=72). Boys seem to be more likely to be abused by a stranger than a relative/known person, girls more likely by a relative/known person than a stranger. This was a difference also reported by Baker and Duncan (1985).⁶ It should be noted that some of the 'known' persons may have been living as a member of the household when the abuse occurred.

3. Most abusers are male. All of the studies reviewed here report that men comprise the majority of the abusers. The proportion of female abusers is very low indeed. As noted above, in the BBC survey, 6% of the abusers reported by women where the sex of the abuser was reported were women (total number of abusers identified by women = 51), 31% of the abusers reported by men where the sex of the abuser was reported were women (the total number of abusers identified by boys was small, N=13)(in La Fontaine, 1990). Kelly et al report that where the sex of the abuser was known, 15% of 'peer abusers' (where the abuser is under 18 years old) and 5% of adult abusers were female. Most of these abusers were reported by men; only two women reported abuse by females (1991:12). Furthermore, Kelly et al note that their data suggest that the men who reported sexual abuse by women define themselves as less victimised (than by male abusers), and a proportion define the experiences as positive (1991:12).

⁵ See eg. Nasjleti, 1980; Bolton et al, 1989.

⁶ Although the BBC survey found the opposite, La Fontaine points out that there were only 12 cases of abuse of boys in this survey from which to make a comparison.

Feminist Analyses of Incest

In this thesis I am interested in exploring how feminist writers have theorised the abuse these statistics reveal. The impact of these feminist analyses is due to the fact that not only do they highlight the occurrence of incest, which the focus on an incest prohibition had disguised, but that in their analyses they bring incest out of the realms of psychology and the sociology of deviance and ask sociological questions about the *normality* of incestuous abuse.

This is not to say that there has been no feminist interest in the incest prohibition. Rubin, in her influential article 'The Traffic in Women: Notes on the 'Political Economy' of Sex'(1975), drew and expanded upon, *inter alia*, Levis Strauss' (1969) work. Rubin argued that Levi Strauss' theory illuminates that an exchange of or 'traffic' in women is at the basis of social relations between men.

'If it is women who are being transmitted, then it is the men who give and take them who are linked, the woman being a conduit of a relationship rather than a partner to it. ... If women are the gifts, then it is men who are the exchange partners. And it is the partners, not the presents, upon whom reciprocal exchange confers its quasi-mystical power of social linkage. The relations of such a system are such that women are in no position to realise the benefits of their own circulation. ... Men are beneficiaries of the product of such exchanges - social organisation.'(Rubin, 1975:174).

Rubin suggested that the exchange of women is central to the social relations of sex and gender, thus retaining, through Levi Strauss, a central role for the incest prohibition. Levi Strauss had suggested that women were treated like language, as signs, exchanged between men, not to be misused but communicated (1969:494-6). Rubin expands this into a tool for understanding sexual systems. She notes that women are 'given away' in marriage, taken in battle, sent as tributes. They are traded, bought and sold, not in the same way that men are as slaves, but simply as women. The 'exchange in women', Rubin hypothesizes, can be used as a shorthand for expressing that the social relations of a kinship system specify that men have certain rights to their female kin and that women do not have the same rights to themselves or to their kin. The exchange of women, she argued, is a powerful concept, enabling one to place at the centre of the oppression of women not the traffic in merchandise (as Marxism had for oppression of workers) but the traffic in women. This traffic in women entails obligatory heterosexuality and the constraint of female sexuality. What has been termed women's 'economic oppression' is

secondary to this exchange, Rubin argues, but there is also an economics of sexual systems such that feminists need to study the whole question of the 'political economy' of sexual systems.

Recent feminist analyses of incest, however, take as their point of departure the actual occurrence of incestuous acts (eg. Armstrong, 1978; 1987; Butler, 1985; Driver and Droisen, 1989; Herman, 1981; Kelly, 1988b; MacLeod and Saraga, 1988; Nelson, 1987; Ward, 1984). Crucially, these feminist analyses have argued that, given male dominated societies, incestuous abuse is in many ways *unsurprising*. Feminists analyse incest not in relation to the chaos with which sociological functionalism had associated it, but exactly in relation to the order of society: an order which maintains the structure of the male headed household and male supremacist society in general.⁷ In these feminist analyses, the practice of incest has taken the place of the prohibition as the focus of theorising about society. It is not an incest taboo but the *practice* of incest that tells us something about the order and the culture of society.

Incest has been approached from within the context of feminist analysis of sexual violence. Feminist work had established that rape and sexual assaults occur much more frequently than was generally believed, and that they were rarely as popular images depicted them, being committed more by people whom the women knew and within a house than by a stranger on the street (eg. Russell, 1975). Rape Crisis Centres were established to provide support for women who had been raped or sexual assaulted, and Women's Aid dealt with cases of assault by husbands on their wives. It was within the context of work of this kind that the occurrence of incest began to be told. Women began to speak of their abuse by men related to them. Incest became visible as another form of male violence: its most common form a sexual abuse by an older male against a younger female.

Most of the feminist work on incestuous abuse focuses on girl-children. As the statistics discussed above illustrate, the focus on girl-children does seem to cover the majority of incestuous child abuse. However, many of the feminist arguments hold for the sexual abuse of boy children as well. To be clear, the feminist analyses of incestuous abuse are not about all incest (they do not discuss consensual incestuous sexual intercourse between

⁷ The extent to which these feminist analyses contradict Rubin's account is a difficult question. On the one hand, incest for Rubin, as for Levi Strauss, *would* be surprising, since male domination and power is based upon a traffic in women. On the other hand, it is possible for a man both to exchange the women of his family and to abuse them. The two are not mutually exclusive. His ability to exchange them is to a certain degree the same as his ability to abuse them.

adults), nor are they of all or even most child sexual abuse (although many of their arguments are also relevant there): they are of a particular segment of child sexual abuse.

The term incest has been challenged by feminist writers because it fails to convey what actually happens. Those who have retained the term incest (eg. Nelson, 1987) argue that the way the term is understood should be altered. Ward argues that the term 'incest' does not name, describe or accept the feelings and reactions of the women who told of their abuse by their male relatives (1984:213). She used the term 'Father-Daughter rape' instead. This term is not meant to refer only to biological fathers and their daughters, but to the role of an adult male with some form of responsibility over the child and a female child. The term rape more adequately explains what happens, argues Ward, for even if actual rape does not occur the incidents are sexual assaults. The term incest on the other hand is a static term which does not convey the dynamics of the situation (1984:79). Butler (1985) used the term 'incestuous assault' for the same reasons. Kelly uses the term incestuous abuse as a sub-category of child sexual abuse, suggesting that feminists retain a specific category of abuse by a member of the child's household or family in the same way that the term domestic violence does for adult women (1988a:71).

Kelly suggests, furthermore, that there is evidence to posit a 'continuum of sexual violence' (1988b:48), a concept by which she means to convey two points. First, that there is a common character underlying the ways in which men abuse, coerce and force women, and secondly, that there are not always clearly defined categories into which women can place their experiences. In the context of incestuous abuse the question of defining experiences is a difficult one: not only must the act be defined, but also the relationship between those involved. Butler uses the following definition:

'any manual, oral, genital sexual contact or other explicit sexual behaviour that an adult family member imposes on the child, who is unable to alter or understand the adult's behaviour because of his or her powerlessness in the family and early stage of psychological development.' (1985:4-5).

Nelson uses the definition proposed by Forward:

'any overtly sexual contact between people who are either closely related or perceive themselves to be ... if that special trust that exists between a child and an adult figure or sibling is violated by a sexual act, that act becomes incestuous.' (in Nelson, 1987:14).

These definitions reveal the choices that have to be made in defining incidents as incestuous abuse or not. Decisions have to be made about whether contact has to be made, how to label contact 'sexual' as well as which relatives to include, whether to include

authority figures in the household (such as mother's boyfriends), whether to put an age limit in the definition and so on. Generally feminist work, whilst recognising the difficulties, has included abuse by those who live as a part of the household within the term 'incestuous'. In terms of what acts are abusive, feminists have attempted to respect the feelings of women survivors who have spoken about their experiences, reflecting what they experienced as abusive in the definitions used. This has meant that feminists have often included incidents that others would not, such as nontactile abuse. A further point to note is that feminists have concentrated on incestuous abuse, considering consensual incest as both rare and outside their interests. This last point raises the issue of what counts as consent. Feminist work has made clear that there are often implicit as well as explicit threats used in an abusive situation. Threats of either mode make the incident non-consensual. Incidents where the incident was experienced as 'pressured' would also be included as non-consensual. This does not close the issue, because feminist work would also raise questions about an incident in which the child says s/he consented. Hence Butler's (1985) definition includes reference to the child's understanding and stage of psychological development. This whole area is not unproblematic. However, the feminist work has concentrated by and large on incestuous incidents which have been reported by the survivors as abusive.

Most of the feminist texts on incestuous abuse that are explored in this thesis were written before the statistical studies discussed above were published.⁸ However, the statistical evidence is useful as a context within which to place the feminist analyses because it clarifies where their work lies. Although incestuous abuse is understood as on the 'continuum of sexual violence' and closest to the broad category child sexual abuse, it is a specific form of sexual abuse. As with child sexual abuse, incestuous abuse is committed overwhelmingly by men. As with child sexual abuse, more girls seem to have been incestuously abused than have boys. The difference from child sexual abuse, in terms of definition, is that the abuser is related to the abused (in a way specified by the researchers). Several feminist writers have included abusers who are not related by blood in their work on incestuous abuse. For example, mother's boyfriends are often included. However the relationship sufficient to be included in a work on incestuous abuse is defined, the extra sociological dimension that is not necessarily pertinent to work on child sexual abuse generally is that of the family. In feminist work on incestuous abuse the family is interrogated as an important context, a crucial site of gender and power relations.

⁸ Nor would all of the authors of the statistical studies identify their work as feminist.

The Work of Michel Foucault: Power, Sexuality and Discourse.

In the analysis of incestuous abuse, the feminist texts address issues of power and sexuality. The work of Michel Foucault also addresses issues of power and sexuality, although from a very different perspective. Foucault has painted a broad picture about the way in which the West speaks about sex, and the knowledges which work to produce 'true discourses' on sex. In this section, I will briefly introduce the main arguments of the work of Michel Foucault, concentrating on The History of Sexuality: An Introduction (1981, first published in French in 1976, hereafter THS). In this thesis I will explore the potential of this text for feminist work generally and for feminist work on incestuous abuse in particular. I will also consider its arguments in light of the notion of the incest prohibition which has been the focus of orthodox sociology.

THS, the first volume of what was to be a seven volume study, is a dense and provocative thesis concerning the change in the way the West has understood sex. This book will be the text most closely used in this thesis, although other articles, interviews and books will be brought in through the appraisal of this work. Some of the later interviews, in particular where Foucault develops his perspective on domination (in Bernauer and Rasmussen, 1988), are pertinent to this thesis (Chapter Two, below).

In THS, Foucault takes as read that sexuality is socially constructed. From this perspective, sexuality is not a property of the body, nor a natural tendency, but is formed within and informed by the structure of the society in which one lives. Thus we learn how to behave sexually, which sorts of people it is alright to be attracted to and to have sexual relations with. This type of analysis is not unfamiliar in sociological work, and is one that much feminist work adheres to (Jackson, 1978; Vance, 1984; Barale, 1986). But although he shares this broad stance, Foucault's project is slightly different. He traces the *history* of the social construction of sexuality, and considers how it has been variously and differentially produced at different times and with different effects. THS is a study of discourses that surround and produce sexuality, it is about the operation of power and the formation of knowledge.

THS begins with the demolition of a story. This story is the history of sexuality as it has been habitually told, one that depicts a move from a time in which sex was freely seen and spoken about, to a time of repression, associated with nineteenth century prudery, when sex reputedly became a matter of shame, to be 'hidden away' in

the conjugal bedroom, to, finally, the present era in which sexuality is beginning again to be liberated. It is only now, this story suggests, in the latter half of the twentieth century that sexual liberation is beginning again to be possible.⁹ To this account, Foucault contrasts his own. He argues that sexuality did not undergo a period of repression in the last century. Sexuality was not silenced, but, rather, it was a time that witnessed an explosion of discourses around sex.

The thesis of THS is not to totally deny the repressive hypothesis that views the history of sexuality as one that follows the trajectory 'freedom - repression - limited freedom' but to place it within a wider framework, that is, 'the emergence of multiple discourses on sexuality and the particular style of those discourses' (Cousins and Hussain, 1984:204). The explosion of discourses to which Foucault points are not simply those of scandalous literature, those that are regularly held up as the other side of a Victorian hypocrisy around sex, but also the medical/ psychological/welfare discourses, the knowledges that Foucault sees as forming the 'will to know'¹⁰ about sex. Sex became something that had to be managed. It called for analytic discourses, useful and public discourses (1981:24-5). Any 'repression' of sexuality did not silence discourses of sex, since sex was still every where present, in the architectural lay out of schools, for example, where children are segregated by sex by such designs as entering through different doors and staircases. Any restrictions on the way people could speak about sex was, Foucault suggests, 'only the counter-part of other discourses, and perhaps necessary in order for them to function' (1981:30). Thus the restrictions on speaking about sex effectively created the space for knowledges of sex to be expounded by those who could 'really know' the secrets and dangers of sex (1981:30).

'It is true that a long standing 'freedom' of language between children and adults, pupils or teachers, may have disappeared ... But this was not a plain and simple imposition of silence. Rather, it was a new regime of discourses. Not any less was said ..., on the contrary. But things were said in a different way; it was different people who said them, from different points of view, and in order to obtain different results. Silence itself ... is less the absolute limit of discourse, the other side from which it is separated by a strict boundary, than an element that functions alongside the things said, with them and in relation to them within over-all strategies.' (1981:27).

⁹ Reading Foucault in 1991, one is struck by the further change in sexual discourses. The way of speaking about sex which Foucault attacks, that which celebrates sexual liberation, has long since passed. Of course, Foucault's thesis concerning the historical and discursive production of sexuality is not contradicted by this.

¹⁰ A term adopted and adapted from the work of Nietzsche (1968) (will to power).

Foucault's interest is in the way that the discursive strategies 'implanted' sexuality by talking and acting in the name of knowledge of sex. A regime of 'power-knowledge-pleasure' that sustains the proliferation of discourses is Foucault's object of study (1981:11). The deployment of sexuality 'consists in strategies of relations of forces supporting, and supported by, types of knowledge.' (Foucault, in Merquoir, 1985:123).

Foucault's argument is developed, as Cousins and Hussain (1984:208) note, along two lines. First, it considers the style of discourses on sexuality, and secondly, it considers the objects of these discourses. Sexuality has been brought, Foucault argues, into the realm of knowledge, the play of true and false. It has been made a scientific concern - 'scientia sexualis' - whereby 'an entire machinery for producing true discourses concerning [sex]' is put into operation. Sex is regarded as harbouring a fundamental secret that must be brought out into the open and deciphered by those with the appropriate expertise for what it can tell of the person. Foucault's argument is that although sexuality is apparently the object of these discourses, it is itself developed *through* these discourses. That is, it was not the target but the product of their operations:

"sexuality": the correlative of that slowly developed discursive practice which constitutes the scientia sexualis. The essential features of this sexuality are not the expression of a representation that is more or less distorted by ideology, or of a misunderstanding caused by taboos; they correspond to the functional requirements of a discourse that must produce its truth. ... sexuality was defined as being 'by nature': a domain susceptible to pathological processes, and hence calling for therapeutic or normalising intervention; a field of meanings to decipher; the site of processes concealed by specific mechanisms; a focus of indefinite causal relations; and an obscure speech (parole) that had to be ferreted out and listened to.' (1981:68).

The 'objects' to which the will to know are directed, and to which corresponding actions are directed, Foucault continues, form four great strategies of the deployment of sexuality, four strategies of power and knowledge. The strategies identified by Foucault are as follows: the hysterisation of women's bodies; a pedagogisation of children's sex; a socialisation of procreative behaviour, and a psychiatrization of perverse pleasure. Emerging through these strategies were the four figures, objects of knowledge and anchorage points for that knowledge: the hysterical woman; the masturbating child; the Malthusian couple, and the perverse adult (1981:104). Foucault argues that through these strategies sexuality was deployed. For example, children became the focus of attention as masturbation was simultaneously spoken of as a natural inclination and as a danger, both physical and moral, individual and collective. It was asserted that 'all children indulge or are prone to indulge in sexual activity; and that, being unwarranted, at the same time

'natural' and 'contrary to nature', this sexual activity posed physical and moral, individual and collective dangers'(1981:104). Around the child gathered 'parents, families, educators, doctors and eventually psychologists'(1981:104) who watched out for any signs of sexuality.

For the 'perverse adult', sexual acts that were previously considered simply as acts 'against nature', were now linked with something deeper, regarded as the signs of a sexuality that was pathological and in need of correction. By focusing on the 'periphery', moreover, there was built a knowledge of the normal. This argument was also advanced by Foucault in Discipline and Punish (1979) where he considered the normalising effects of penal techniques of control as they formed simultaneously a knowledge of the delinquent as a type and a knowledge of the 'normal' from whose standards the inmates deviated. The strategies of the deployment of sexuality operated, in this sense, in a normalising fashion. Foucault argues

'What was at issue in these strategies? A struggle against sexuality? Or were they part of an effort to gain control of it? An attempt to regulate it more effectively and mask its more indiscreet, conspicuous, and intractable aspects? A way of formulating only that measure of knowledge that was acceptable and useful? In actual fact, what was involved, rather, was the very production of sexuality. Sexuality must not be thought of as a kind of natural given which power tries to hold in check, or as an obscure domain which knowledge tries gradually to uncover. It is the name that can be given to a historical construct; not a furtive reality that is difficult to grasp, but a great surface network in which the stimulation of bodies, the intensification of pleasures, the incitement to discourse, the formation of special knowledges, the strengthening of controls and resistances, are linked to one another, in accordance with a few major strategies of knowledge and power.'(1981:105-6).

Thus, where traditional histories might have seen a repression of sex, or, in a Reichian Marxist history, the elimination of non-productive sex ('work, don't make love', in Kritzman, 1988:112), Foucault argues there was an incitement to talk about sex, and the very production of something we now call and generally understand as natural: sexuality. The efforts that might have been taken as signs of repression, signs of a prudery around sex, were, Foucault contends, actually about the very production of that to which they were supposedly opposed. Sexuality, as we now understand the term, was actually being produced.

Not only does the West speak of sexuality as a natural part of ourselves, we live in a time when sexuality is regarded as a key to our inner selves. The sexual confession, long a part of Christian religion, has taken on a new context within the

twentieth century psychoanalysis. Sexuality has become part of a diffuse causality for one's problems, the confession a clinical procedure which, with the aid of an interpreter, has positive effects for the confessor (1981:65-7). The confession is one of the mechanisms of the deployment of sexuality, Foucault suggests, employed within many different kinds of relationships, forming a procedure by which individuals produce discourse on sexuality generally at the same time as they speak of their own sexual feelings, sensations and fantasies. It is Foucault's 'general working hypothesis' that

'The society that emerged in the nineteenth century - bourgeois, capitalist, or industrial society, call it what you will - did not confront sex with a fundamental refusal of recognition. On the contrary, it put into operation an entire machinery for producing true discourses concerning it. Not only did it speak of sex and compel every one to do so; it also set out to formulate the uniform truth of sex. As if it suspected sex of harbouring a fundamental secret. ... As if it was essential that sex be inscribed not only in an economy of pleasure but in an ordered system of knowledge. ... Thus sex gradually became an object of great suspicion.' (1981:69).

'Between each of us and our sex, the West has placed a never ending demand for truth: it is up to us to extract the truth of sex, since this truth is beyond its grasp; it is up to sex to tell us our truth, since sex is what holds it is darkness. ... In the space of a few centuries, a certain inclination has led us to direct the question of what we are, to sex.' (1981:77-8).

It is clear from this last quotation that Foucault's thesis on the proliferation of 'true discourses' of sexuality is also about the construction of subjectivity. How we understand ourselves as sexual beings and as subjects in a more general sense was a question to which Foucault considered his work to be addressed (in Dreyfus and Rabinow, 1982). In *THS*, however, he is more explicitly concerned with the operations of power (see especially 1981:81-102), and what he has to say about power has wider implications, beyond the realm of sexuality.

Foucault argues that rather than asking 'what is power?' or 'where does power come from?', the 'little question' of 'what happens?' should be the starting point of the study of power ('The Subject and Power', in Dreyfus and Rabinow, 1982:217). Sexuality seemed a good area to 'test what the mechanisms of power actually were' (1978, in Kritzman 1988:102). The deployment of sexuality was, Foucault suggests, part of a change in the operations of power in Western societies generally. One of the central arguments of the book is that whilst power may still be thought of as what Foucault terms 'juridico-discursive' power, a negative and repressive force, one that can only say

'no', it no longer operates in that fashion. The power that surrounds sexuality, for example, is a productive power, producing the very notion of a natural sexuality as well as the various subjectivities that correspond to such a notion. For Foucault, power is much more diffuse than is generally believed. It is not located in one arena (such as the State), it does not belong to any one person or group of people (such as the sovereign or the bourgeoisie), but it exists only in its operation, in its exercise, and on all levels of society. Power is a relation. If political theory continues to regard power as a possession, something that can be held onto and that is generally held onto by institutions of the State, it misses the operation of power on other levels and in other arenas. Especially, it misses any analysis of how various knowledges are produced through power and are combined with power wherever they are implemented, for this is how Foucault understands the relationship between knowledge and power. With his influential notion of 'power/knowledge' Foucault suggested that the construction of knowledge involves power relations and further, that when those knowledges are drawn upon they are continuing the original power relations as well as potentially instituting new ones. The various discourses of the deployment of sexuality are to be regarded as the 'juncture(s) where power and knowledge meet' (Lemert and Gillan, 1982:62). Discourses, both the ways of talking and their correlative practices surrounding and producing sexuality, are therefore imbued with relations of power. These arguments around discourse, power and knowledge are to be considered in more detail in the next chapter and in the course of this thesis.

Although Foucault's work has been used in studies of sexuality (eg. Weeks, 1981), and in studies of law (eg. Smart, 1989), it has never been used in an analysis of incest. It is particularly interesting for this thesis that not only does Foucault write of incest in THS but it is placed at a pivotal position within Foucault's framework, one that complicates Foucault's schema of the change in the relations between power and sex. (This will be explained fully in Chapter Four).

However, it is not unproblematic to use the work of Michel Foucault within a feminist context. Whilst some have noted 'convergences' and been optimistic about 'the possibility of a friendship grounded in political and ethical commitment' (Diamond and Quinby, 1988:ix), there has been some hostility to his work from feminists (eg. Alcoff, 1987; Hartsock, 1990; West, 1989). A central theoretical question of this thesis therefore becomes 'Is it possible to use the work of Foucault within and alongside a feminist analyses?' I argue that Foucault can be of use to feminist work and that it is possible to use Foucault without being drawn into an uncritical adoption of his work.

This conclusion is arrived at after a careful consideration of the points of conflict between Foucault and feminism (Chapter 2).

Outline of Thesis

Part One of this thesis will look in some detail at the relationship between the work of Michel Foucault and feminism and the issues that arise from their meeting. It is an exploration of theoretical and methodological issues. The feminist analyses of incest are explored as sociological texts alongside the work Foucault. The topic of incest is thus on the one hand a site at which to explore theoretical issues raised by the meeting of Foucault and feminism. On the other, incest is what this thesis is about, with feminism and Foucault invoked as the most important recent contributors to this sociological terrain. This part will be divided into three chapters. Chapter Two will consider Foucault's arguments around power, sexuality and discourse in order to seek out useful concepts and approaches for feminist analysis and to investigate whether there are major stumbling blocks to the use of Foucault within a feminist framework. Chapter Three will draw upon the discussions of Chapter Two in an investigation of the specific topic of incest, and will explore the feminist analyses of incest in the light of Foucault's work. Chapter Four introduces Foucault's own comments on incest, and raises questions about their usefulness for a feminist approach to the study of incest. Although these three chapters are addressed to the construction of a defensible framework for this study, it is hoped that they will have implications beyond the scope of this thesis.

The theoretical discussions of the first half of the thesis inform the approach and questions of the second, which moves the issue to an analysis of criminal law on incest. Part Two is an investigation of the debates that have preceded the creation of the two laws on incest which form the current criminal law on incest in Britain: the 1908 Punishment of Incest Act (later incorporated in the 1957 Sexual Offences Act) and the 1986 Incest and Related Offences (Scotland) Act. These are debates that were specifically on incest and its place in criminal law. They took place in 1903 and 1908 (with regard to English law) and in the 1980s (with regard to Scots law). This part of the thesis will also be divided into three chapters. Chapter Five will introduce the debates and give a statement of the approach to be taken in light of the discussions of Part One and also in light of feminist approaches to the theorising of law. Chapter Six will consider the image of incest that is constructed as the speakers debate incest: Is

incest spoken of as a practice? Who is spoken of as involved in incest? What acts are constituted as 'incest'? Who is regarded as the victim of incest? Chapter Seven will consider the way in which incest is constructed as a problem in these debates through a detailed consideration of what the speakers deem to be wrong with incest and the knowledges which they articulate in suggesting their positions. Finally Chapter Eight will present the conclusions of the thesis.

The relationship between Part One and Part Two, therefore, is such that whilst Part Two will draw upon Part One in that it will be using Foucault and feminism in the manner discussed there, Part Two should not be considered as the *thorough* implementation of all the conclusions reached in Part One. Part One is in a sense much 'bigger' than Part Two, which may, in turn, be considered a 'case study' of utilising Foucault and feminist work together.

PART ONE:

Foucault and Feminism: On Incest

Chapter Two

Foucault and Feminism

Having introduced this thesis as one which draws both upon the writings of feminists and that of Michel Foucault, in this chapter I consider the relationship between these two bodies of work. Foucault's work has received some very different reactions from feminist writers. Although some have read Foucault's The History of Sexuality: An Introduction (hereafter THS) as part of a feminist project (eg. Bartkowski, 1988; Snitow et al, 1984) and some have welcomed his central arguments within a feminist framework (eg. Weedon, 1987), others have found this text problematic for feminism's task (eg. Hartsock, 1990; West, 1989), so that one can conclude that there has been at the least an ambivalence between Foucault and feminism.

Certainly there is some common ground between Foucault and feminism. The points of common ground are important to the extent that they explain why Foucault's work is attractive to feminism (McWhorter, 1986). Furthermore, as Diamond and Quinby argue, 'convergences ... suggest the possibility of a friendship'(1988:ix). Although not without some differences in emphasis, these convergences would include: a rejection of major political theories, especially Marxism and liberal humanism, as inadequate both for the analysis of sexuality and as general political theories; an analysis which maintains that the site of power is not or not only in the 'public' sphere, but also in the seemingly most private areas of life; a depiction of power as operating on the body; a concern with the way that sex and sexuality are spoken about (see also Sawicki, 1986, 1988 for points in common).

In this chapter I am looking to see if there are any useful ideas for feminism in Foucault's work. However, instead of focusing directly on points of common ground, this chapter concentrates on the *problems* of a Foucault-feminist meeting. Since there are what appear to be major stumbling blocks, it is these that would seem to need attention in the elucidation of the possibilities of using Foucault within a feminist project. The chapter is not meant as a review of all feminist work and the objections that would be made to

Foucault's work from each and any quarter of feminism. Feminism is too huge and diverse a movement to attempt such an analysis. Instead, the chapter seeks to locate possible antitheses, problems of theoretical models, that would prevent a Foucauldian-feminist project, and to build, through this discussion, a considered theoretical stance. The problems I address crystallise around three broad terms: power, sexuality and discourse. Although there is considerable overlap between the three terms, this chapter takes each of these areas in turn.

Power

Foucault understood his later works to be focused upon an understanding of the operations of power, and he extended this project backwards:

'When I think back now, I ask myself what else it was that I was talking about, in Madness and Civilisation or The Birth of the Clinic, but power? Yet I am perfectly aware that I scarcely ever used the word and never had such a field of analyses at my disposal.'(in Gordon, 1980:115)

As Cousins and Hussain state, over the course of his works and interviews, Foucault's comments on power are disparate and varied 'some banal, some highly suggestive and novel, some laconic and some misleading on a closer examination.'(1984:225). In THS, power is explicitly addressed, and it is this work upon which I shall concentrate, although other sources are helpful, particularly some later interviews which illustrate further development of Foucault's thought on power.

Foucault's Critique of Juridico-Discursive Power

In THS Foucault's remarks are aimed at what he considered the predominant ways of thinking about power at the time he wrote THS. (It is worth noting immediately that feminism was not one of the targets of his accounts). As introduced in Chapter One, Foucault argued that political theory has yet to 'cut off the head of the king' (1981:88-9) insofar as theorists continue to use a model of power premised on the notion of sovereignty, a conception he terms 'juridico-discursive'. This model characterises power as the word of the sovereign: power lays down the law. 'It speaks, and that is the rule' (1981:83). In essence, this model of power regards power's operation as the creation of rules or laws whose transgressors will be punished. Since the Middle Ages, Foucault contends,

theorising power has been constrained within such an imagery and language of law¹. Juridico-discursive power is not only the conception of power found in twentieth century analyses of sexuality (such as Reich (1932) and Marcuse (1955)), but is the analysis of power 'deeply rooted' in the history of the West (1981:83).

Foucault's contention is that power is repeatedly represented in a way that it may have operated in the past but no longer does: 'the representation of power has remained under the spell of the monarchy'(1981:88). The judicial monarchy was characteristic of our societies, but this form of power was 'transitory',

'for while many of its forms have persisted to the present, it has gradually been penetrated by quite new representations of power that are probably irreducible to the representation of law.'(1981:89).

The important characteristics of the juridical conception of power for this discussion can be summarised as follows:

i) Power operates only in negative ways. In the case of sex and pleasure, 'power can 'do' nothing but say no to them'(1981:83). It acts only by prohibition - 'thou shalt not' - with the prohibition backed up by the threat of punishment. The only effect this power would have is obedience. To this Foucault contrasts the productivity of power.

'Power would be a fragile thing if its only function were to repress, if it worked only through the mode of censorship, exclusion blockage and repression ... exercising itself only in a negative way.'(in Gordon 1980:59).

ii) A binary system is set up by the rule demarcating the licit and illicit. In the case of sexuality, the forbidden side is repressed. Power works by the 'triple injunction', simultaneously stating that the illicit is not permitted, preventing it from being articulated but also denying its existence at all (1981:84). Foucault argues against this. According to Foucault, power works not by a binary system in which power's efforts are concentrated on attempting to repress the illicit whilst the licit ignored, but by a process of normalisation. Normalisation is a process that 'compares, differentiates, hierarchizes, homogenizes, excludes.'(1979:183). Normalisation works not on the illicit side of a binary division but everywhere, by setting up a norm to which people must conform, and according to which people are judged and placed in an array of positions. Thus the image of the line gives way to that of a circle with the Norm in the centre.

¹ The sense in which Foucault uses the term 'law' here is subject to debate (Cousins and Hussain, 1984: 236-8). Foucault's position on law will be discussed later in the thesis.

iii) Power emanates from a central source, in the historical situation the monarch, or in political theory the state or a group of people. To this, Foucault argues that power cannot be theorised as a possession, and thus it cannot be regarded as always in the hands of one group. Power is rather a 'complex strategic situation' that is not encapsulated in a binary division: 'there is no binary and all encompassing opposition between rulers and ruled at the root of power relations, and serving as a general matrix'(1981:94). Thus Foucault attacks a second binary division which pervades thinking about power.

iv) Following on from iii), there is in the juridico-discursive conception of power the notion that through resistance one can overcome power and attain freedom. If the source of power is identifiable and power is a possession of those identified as powerful, power can be located and taken away from the powerful by the powerless. Foucault's disagreement with this notion of power is based on the argument that one cannot locate and act upon power in this way because power is all around us: it is 'omnipresent'. Yet Foucault did include a notion of freedom into his work, as will be discussed below (in 'Discourse, Truth and Politics' section).

Foucault's 'Analytics' of Power

The 'little question' of 'what happens?' (1982:217) is the best question by which to approach the study of power, Foucault argued, because it avoids assuming at the outset any model of power. Indeed, it implicitly poses the possibility that power does not exist, and thereby forces one to seek out and study the actual operations of power. In Foucault's 'analytics'² of power, the operation of power has to be studied from 'below', in an ascending analysis (Gordon, 1980:99). Confrontations and patterns formed at the local level should be the place to begin a study of power's operations. The focus of a study of power should be the 'concrete but changing soil', the tactics upon which the larger strategies of power are grounded (Gordon, 1980:186). In *THS* Foucault speaks of a 'network of power relations' that forms a 'dense web that passes through apparatuses and institutions, without being localised within them'(1981:96). Power is to be understood, then, 'in the first instance', as

'the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organisation; as the process which, through ceaseless struggles and confrontations, transforms, strengthens, or reverses them; as the support these force relations find in one another, thus forming a chain or a system, or, on the contrary, the disjunctions and contradictions which isolate them one from one another; and lastly, as the

² Foucault used the term 'analytics' because he did not want to construct a theory of power so much as a *way* of studying power's operations.

strategies in which they take effect, whose general design or institutional crystallisation is embodied in the state apparatus, in the formation of law, in the various social hegemonies.'(1981:92-3).

For Foucault, therefore, the locus of power is dispersed. The state, for example, can only operate on the basis of power relations that exist within the social field, the 'polymorphous techniques of power' (1981:11). For the theorist, the prescription is not to formulate 'global systematic theory ... but to analyse the specificity of mechanisms of power, to locate the connections and extensions'(1981:145). It is these local tactics that work to support what may have appeared at first to be the source of power (Gordon, 1980: 159). Thus one can speak of strategies of power only once one has traced the 'tactics', the microtechniques of power³. This also means that whilst the aims and logic of strategies of power may be clear, there is no one who can be said to have invented them, and few to have formulated them. Power does not necessarily reside with those who make decisions:

'[Power relations are] great anonymous, almost unspoken strategies which coordinate the loquacious tactics whose 'inventors' or decisionmakers are often without hypocrisy.'(1981:95).

Furthermore, Foucault argues that where power operates there is resistance. Foucault insists on the relational character of power and resistance. That is, he states that resistance is not outside power, working against power from without. It is not that there is no escaping power, but that there are a 'multiplicity of points of resistance' that exist in the strategic power network (1981:95-6).

Resistances to power can be different in character. They may be progressive or conservative. There are some that are 'possible, necessary, improbable; others that are spontaneous, savage, solitary, concerted, rampant or violent; still others that are quick to compromise, interested or sacrificial'(1981:96). Occasionally, Foucault concedes, there may be 'massive binary divisions' between those who resist and the operation of power, but he argues

'more often one is dealing with mobile and transitory points of resistance, producing cleavages in a society that shift about, fracturing unities and effecting regroupings, furrowing across individuals themselves, cutting them up and remoulding them, marking off irreducible regions in them, in their bodies and minds'(1981:96).

In stressing the role of resistance, Foucault is also making an important contrast between violence, where the possibility of resistance is taken away, and power, the

³ Foucault's war imagery is sometimes unhelpful to understanding of his arguments because it carries with it notions that are not akin to his position, such as that of two sides in violent combat (Cousins and Hussain, 1984: 245-8).

exercise of which is necessary only when there is the possibility of the 'targets' resisting (see eg. 1988:123). Power operates not to stop its targets acting, but to *control* their actions:

'what defines a relationship of power is that it is a mode of action which does not act directly and immediately on others. Instead it *acts upon their actions*: an action on an action, on existing actions or on those which may arise in the present or the future. A relationship of violence acts upon a body or upon things; it forces, it bends, ... it destroys, or it closes the door on all possibilities. ... On the other hand a power relationship can only be articulated on the basis of two elements which are each indispensable if it is really to be a power relationship: that 'the other' (the one over whom power is exercised) be thoroughly recognised and maintained to the very end as a person who acts; and that, faced with a relationship of power, a whole field of responses, reactions, results and possible inventions may open up.'(1982:220, italics added).

For Foucault, the difference was that the operation of power can achieve aims much more smoothly and successfully than the imposition of violence. As well as the economic cost of violence, there is a 'specifically political cost': 'If you are too violent, you risk provoking revolts' (in Gordon, 1980:155). The sorts of powers Foucault saw in operation involved much quieter, more subtle tactics.

Bio-Power

Foucault's general comments on power are fleshed out towards the end of THS with the conception of power to which he gives the name 'bio-power'. This is a power over life. In contrast with the power of the sovereign which was the right to decide whether to take life or to let live, a right of seizure that included ultimately the lives of the people, this newer power, exercises power over life through many tactics that incite, reinforce, control, monitor, and organise people's lives, so that 'one might say that the ancient right to *take* life or *let* live was replaced by a power to *foster* life or *disallow* it to the point of death'(1981:138).

Bio-power is a bi-polar power. One of these poles centred on 'the body as a machine' (1981:139). Although he does not state it here Foucault is referring back to his previous work Discipline and Punish (1979), in which he provides a detailed exposition of disciplinary power and its operations on the body. In THS it is summarised thus:

'[the body's] disciplining, the optimization of its capabilities, the extortion of its forces, the parallel increase of its usefulness and its docility, its integration into systems of efficient and economic controls, all this was ensured by the procedures of power that characterised the *disciplines*: an *anatomo-politics of the human body*.'(1981:139).

Discipline is a power which works through the 'meticulous control of the operations of the body'(1979:137). Its effect is 'subjected and practised bodies, 'docile' bodies'(1979:138): discipline 'increases the forces the body (in economic terms of utility) and diminishes those same forces (in political terms of obedience)'(1979:138). Foucault traces the operations of discipline within institutions such as the prison, schools, the military, factories. Techniques of disciplinary power were often ones that had been in use in monastic institutions, but in the seventeenth and eighteenth centuries, Foucault argues, they spread to several institutions, and from there to other areas of society, creating 'what might be called in general the disciplinary society'(1979:209)⁴.

Discipline operates through techniques which: order space, separating individuals from one another; control activity, imposing timetables that disallowed idleness, enforcing specific and detailed postures on the 'inmate' population; organise the passing of time into successive stages through which individuals progress; and compose the forces of bodies as an efficient organisation in order to obtain some specific result be it economic or otherwise(1979:141-69). The methods of discipline are described by Foucault as three. First, discipline operates by hierarchical observation which makes it possible for a single gaze to see everything. Secondly, discipline involves normalising judgement, mentioned above, which compares individuals and differentiates between them creating a norm. This normalisation produces homogeneity by measuring all individuals against the same 'norm', but at the same time, it individualises, measuring and differentiating between each and every one. The third method is the examination, which combines both hierarchical observation and normalising judgement. Through the examination individuals are classified and, if considered necessary, punished through the penal system at the heart of disciplinary institutions. Through disciplinary techniques, individuals become 'cases', as a knowledge of him or her is built up. This is a 'reversal of the political axis of individualisation'(1979:192). Where it was, in societies past, the sovereign and the rich who were marked as individuals, in the sense of rare personages, 'by rituals, written accounts or visual reproduction'(1979:192), with disciplinary power it is those at the other pole of the axis who are 'individualised':

'by surveillance rather than ceremonies, by observation rather than commemorative accounts, by comparative measures that have the 'norm' as their reference rather than genealogies giving ancestors as points of reference; by 'gaps' rather than by deeds.'(1979:193).

⁴ Foucault's generalisation of disciplinary techniques to a notion of a 'disciplinary society' has been criticised as a move resembling the totalising notions of power Foucault opposed. The argument is more convincing when discussing the specific settings of disciplinary power without generalising its operations (Breuer, 1989:240-2; Minson, 1985:97-9).

It is with reference to disciplinary power that Foucault most clearly makes the argument that power is productive. Disciplinary mechanisms are not repressive, exclusionary techniques that mask and conceal, but are *productive* techniques. Power is productive in the sense of producing the bodily movements that it dictates, and any economic results in which these movements result. But also power is productive in the sense of 'producing domains of objects and rituals of truth', knowledges and the 'individuals' that are known through those knowledges(1979:194).

Foucault argues that disciplinary power utilises the observation powers of the Panopticon, Jeremy Bentham's architectural design published at the end of the eighteenth century⁵. The organisation of the Panopticon made it possible to observe without being seen, such that the individuals had always to act as though they were being watched resulting in the 'automatic functioning of power'. This is how the Panopticon works:

'at the periphery an annular building; at its centre a tower; this tower is pierced with wide windows that open onto the inner side of the ring; the peripheric building is divided into cells, each of which extends the width of the building; they have two windows, one on the inside, corresponding to the windows of the tower; the other, on the outside, allows the light to cross the cell from one end to the other. All that is needed, then, is to place a supervisor in a central tower and to shut up in each cell a madman, a patient, a condemned man, a worker or a schoolboy. By the effect of backlighting, one can observe from the tower, standing out precisely against the light, the small captive shadows in the cells of the periphery ... [they are] perfectly individualised and constantly visible ... Visibility is a trap.'(1979:200).

The second pole of bio-power, to which the first is connected, Foucault tells us, by 'a whole intermediary cluster of relations'(1981:139) is directed toward the 'species body' as a whole. The target of this power is the life of the population: 'propagation, births and mortality, the level of health, life expectancy and longevity, with all the conditions that can cause these to vary.'(1981:139). These were supervised and regulated. Statistics began to be collected, housing was inspected and the movement of the population monitored. Thus demography emerged as a discipline, with predictions relating population growth to wealth, resources to migration(1981:141).

The interconnections between the two poles of bio-power (equivalent, it seems, to tactics and strategies) are joined by concrete arrangements. These make up the

⁵ Foucault argues that concern with centralised observation predated Bentham's Panopticon, but it was Bentham's 'device' which was repeatedly drawn upon in plans to reorganise prisons from the first half of the nineteenth century (1980:146-7)

'technologies' of power in the nineteenth century. The deployment of sexuality was, Foucault suggests, one of the most important of these arrangements. Thus the deployment of sexuality seems to be more than an example of power for Foucault. Its importance lies in the fact that sex is the link between the two poles of bio-power, at the 'juncture between the 'body' and the 'population', so that it 'became a crucial target of a power organised around the management of life rather than the menace of death.'(1981:147). An example of the ways in which the two poles of bio-power interconnect is that of family planning. The regulation of the population described by Foucault as the strategy directed at the 'Malthusian couple' relied upon the operations of disciplinary power at the individual level. Family planning requires individuals to organise their sexual activity: it is a control of activity, timing, movements. This is a form of discipline that allows the incitement or restriction of procreation.⁶

Power/Knowledge

A hugely important term in Foucault's later writings is 'power/knowledge'. By using this term, Foucault is referring to the processes he has traced whereby, through the operations of power, knowledges are formed. When these knowledges are utilised again, they carry with them the powers through which they were formed. Moreover, when these knowledges are drawn upon they have further power effects. For example, in the case of sexuality, knowledges were formed through the power operating around those who have deviated from the norm of monogamous heterosexuality. Knowledges of the various 'perversions', or 'inappropriate childhood sexual behaviours', were the result of these power techniques that surrounded, studied and discussed the sexuality of these 'deviants'. The results of these various gazes built up a 'scientific knowledge' of perversions and deviations. This knowledge was not just of the 'periphery' however, since through implicit and explicit comparison, a knowledge of the 'normal' was simultaneously produced. The '*scientia sexualis*' was an 'entire machinery for producing true discourses concerning [sex].'(1981:69).

One of the consequences of this, as discussed above, was that sexuality was 'implanted' in the body. The deviations of some were understood as problems with their

⁶ One might speculate further on how the other strategies of the deployment of sexuality involve both poles of bio-power, although Foucault himself discusses none of these. Pedagogisation of children's sex, for example, involves organisation of space in the household as children are kept separate from one another and from parental sexual activity thereby instituting the parental (and other) gaze over the children's bodies, whilst the dangers of masturbation for the race as a whole were expounded, justifying and encouraging this disciplinary power around children in the home.

internal sexual makeup. Sexual behaviour was no longer simply actions but the result/expression of one's 'sexuality'. Through the operations of these powers around 'problematic' sexual behaviour, a general knowledge of all forms of sexuality emerged.

Foucault does not argue that power and knowledge are the same thing. Rather, they are entwined: 'if I had said, or meant, that knowledge was power, I would have said so, and, having said so, I would have had nothing more to say, since, having made them identical, I don't see why I would have taken the trouble to show the different relations between them.'(1988:264). Sometimes Foucault speaks of power as if it were *always* entwined with knowledge:

'power produces knowledge (and not simply by encouraging it because it serves power or apply it because it is useful); ... power and knowledge directly imply one another; ... there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations.'(1979:27).

In his later interviews, however, Foucault argues that it is not the case that all knowledges are the result of or continue power relations. He answers in a interview that his analysis of the relations between power and knowledge concern human sciences, and do not concern the 'exact sciences'⁷ at all (1988:106). He also states that it is possible to find knowledges of the human sciences that are 'independent' of power (1988:106). It is in the detailed study of specific areas of society that one illuminates any interconnections between power and knowledge.

Implications for Feminist Use of Foucault

What are the implications of Foucault's work on power for feminism?

There is broad similarity between Foucault's point of departure and that of feminist analyses in that they both reject other models of power. Feminism too has been critical of liberal theory and of Marxism (Martin, 1988; Hartmann, 1981). The feminist dissatisfaction with liberalism and Marxism, however, is based on a different charge from Foucault's dissatisfaction, namely the absence of women in the traditional analyses. Debates within feminism have been more willing than Foucault to explore these models, spawning several different revisions. The dissatisfaction, then, is a similar point of departure, but this similarity does not run very far. Having said this, an important component of the rejection that both feminism and Foucault have in common is that the

⁷ Pierre Boncenne's (the interviewer) words.

traditional liberal and Marxist often uphold a public/private split, missing the point that the operation of power is just as central in the 'private' areas of life, concerning 'our bodies, our day to day existences.' (Foucault, 1980:186). Especially within the context of sexuality, this is clear. So-called 'second wave' feminism criticised the sexual liberation movement of the 1960s and 1970s for failing to analyse the political dimension of sexual relations (Shulman, 1980). Feminists argued, as does Foucault, against the notion that there has been 'sexual liberation', pointing out that a freedom to engage in sexual relations does not mean the erasure of power relations in the realm of sexuality.

However, there are problems with a feminist/Foucauldian meeting that arise around Foucault's rejection of juridico-discursive power (the model he regards as common in both liberalism and Marxism), for this is the model of power that feminists might be seen to rely upon. In the remainder of this section, I will discuss this problem and the revisions that Foucault appeared to make in his later interviews, before turning to some aspects of Foucault's work on power that have been regarded as useful in feminist work.

The Binary Division in Feminist Analyses of Power

The major problem that Foucault's work on power presents for feminism is that feminism might be seen to be using aspects of the juridico-discursive model of power that Foucault rejects. These aspects concern the binary division of power. That is, the ruler/ruled division of the juridico-discursive power might be seen to be replicated in feminist analyses to the extent that men are theorised as having power over women. To draw this out a little, feminism might be seen to use the juridico-discursive model to the extent that:

- i) they depict a *hierarchical* binary division with men 'on top'
- ii) they depict men as *possessing* power
- iii) they depict this as a *static* power relation.

As will be recalled, for Foucault, power is not something that can be possessed, but exists only in its exercise, and since that exercise takes place all around us - power is 'omnipresent' - , it is inaccurate to posit at the outset a great binary division in power. The overall sense that Foucault's work gives of power is as fluid and unpredictable. Power is much more mobile and unstable than the binary division contained within juridico-discursive models of power suggest. For feminism, however, the argument that power is structured along lines of gender has been a fundamental point of departure.

In an article exploring the relationship between Foucault and feminism on power, Hartsock identifies this problem with his work from a (materialist) feminist perspective (1990:157-75). Hartsock raises the question of the lack of social structures in Foucault's work.

'his stress on heterogeneity and the specificity of each situation leads him to lose track of social structures and instead to focus on how individuals experience and exercise power. Individuals, he argues, 'are always in the position of simultaneously undergoing and exercising this power'⁸... With this move Foucault has made it very difficult to locate domination, including domination in gender relations.'(1990:169).

By the term 'domination' Hartsock would seem to be referring to the points noted above as potential clashes of feminism with Foucault. Other feminists have also noted this problem.

Phelan (1990) uses Foucault to argue against feminist writers such as Rich (1980) and Daly (1978), who tend to depict men as statically holding power over women. Phelan's reading of Foucault is a sympathetic one, one that allows his 'analytics' of power to reach feminist conclusions:

'Foucault's work should lead us to suspect that these various sites of oppression are indeed various, that we must examine them in their particularity, as operations that may oppose and challenge one another even as they tend toward a common end for women ... unity is a production, shifting and unstable, as are divisions.'(Phelan, 1990:428).

Phelan's conclusion is appealing because it allows for the complexities of power's operations without abandoning the feminist argument that in some broad way women share a common oppression. It refuses to allow women to be painted as merely the victims of male domination, a depiction that has been criticised within feminism, by emphasising the power that women exercise either indirectly, in spheres where women do have the opportunity to be powerful, or in direct resistance to the exercise of male power (this later type of resistance has been highlighted in recent feminist analyses of male violence, see Kelly (1988b) and Gordon (1986;1989)). It is also, incidentally, more optimistic in the sense that if power is exercised not possessed, contingent rather than static, feminist opposition to the various operations of power may expect to identify more gaps and weaknesses in power's operations.

However, it remains the case that the patterns that feminists have pointed to, the shifting unity of repeated discrimination, does appear as almost a coincidence in

⁸ Quoted in Gordon, 1980:197

Foucault's model of power. Although Foucault's work is useful to feminism in thinking through the contingency of power relations, feminism needs to ^{be} able to name the familiar patterns that emerge. Thus I suggest that in using Foucault feminists might make the distinction between the operations of power and *domination* as a name given to a state of 'perpetual asymmetry'. This distinction is one that Foucault himself conceded in a late interview. Foucault explained, (using the example of husband and wife, interestingly), that domination is where:

'the relations of power are fixed in such a way that they are perpetually asymmetrical and the margin of liberty is extremely limited. To take an example, very paradigmatic to be sure: in the traditional conjugal relation of the eighteenth and nineteenth centuries, we cannot say that there was only male power: the woman herself could do a lot of things: be unfaithful to him, extract money from him, refuse him sexually. She was, however, subject to a state of domination, in the measure where all that was finally no more than a certain number of tricks which never brought about a reversal of the situation.' (Bernauer and Rasmussen, 1988:12).

Thus domination is a situation, still based on the operations of unstable tactics of power, but where a reversal in power relations is almost impossible. For feminism, this concession on Foucault's part adds weight to the argument that patterns of asymmetry between men and women repeatedly emerge from feminist investigations.

Referring back to the three aspects of power at which a feminist/Foucault meeting may become difficult, it can be argued that the first of the three (hierarchy) can be retained even as the other two points (the ability to possess power and the static nature of power relations) are refuted. Foucault's argument that the binary model of power which depicts power as a possession and as static captures neither the contingency of power nor the fact that power is always an exercise is convincing and illuminating. However, feminist analyses are about the demonstration of hierarchy. It is this hierarchy that Foucault seems to concede with the label 'domination'. Domination, in a feminist use of Foucault, would be the 'perpetual asymmetry' between men and women in the exercise and the effects of power's operations. Thus although men cannot be said to possess power, nor to exclusively exercise power, feminist analysis demonstrates the differential and hierarchical positions of men and women in relations which repeatedly accord men the greater access to the exercise of power.

Feminist Use of Foucault's Notion of Disciplinary Power

Some of the most convincing feminist work that has used Foucault's writings on power have focused on his notion of disciplinary power. Foucault's detailed work on the operations of disciplinary power on the body have been applied to the study of the construction of femininity (Bartky 1988).⁹

Sandra Lee Bartky (1988) uses Foucault's exposition of disciplinary power in an analysis of the ways in which women's bodies are disciplined in the name of femininity. Bartky states

'Foucault treats the body throughout as if it were one, as if the bodily experiences of men and women did not differ and as if men and women bore the same relationship to the characteristic institutions of modern life. ... he is blind to those disciplines that produce a modality of embodiment that is peculiarly feminine.'(1988:64).

Nevertheless, Bartky applies Foucault's ideas persuasively to an examination of the different ways in which women's bodies are 'rendered docile' through the disciplinary practices of exercise and diet, of correct body language, and of fashion and make-up. In particular Bartky draws upon Foucault's analysis of the normalising power effects of Bentham's Panopticon, described above. In this trap of visibility, power is both visible and unverifiable for the inmate. It is visible due to the presence of the surveillance tower constantly before him or her. Yet it is unverifiable because the inmate can never know whether s/he is being watched at any particular moment (1979:201). One of the prime effects of disciplinary power due to the fact that the visible individual can never know whether they are being watched or not, is the 'automatic' functioning of power. The inmates watch over themselves:

'He who is subjected to a field of visibility and who knows it assumes responsibility for the constraints of power; he makes them play spontaneously upon himself; he inscribes in himself the power relation in which he simultaneously plays both roles; he becomes the principle of his own subjection.'(1979:202-3).

Bartky applies Foucault's work on disciplinary power to the practice of femininity. She states: 'Woman lives her body as seen by another, by an anonymous patriarchal Other.'(1988:72). Bartky considers the various ways in which women's bodies are manipulated by the demands of contemporary society. These include exercise, dieting, the holding of the body so that it occupies as small a space as possible, make up

⁹ They have also been used elsewhere in feminist work, such as in work on eating disorders (Bordo, 1988b).

and perfect appearance. Bartky argues that this is not just a case of women being marked differently from men. There is a value judgement being placed upon women. They are marked not simply as different but as inferior (that is, within a hierarchy):

'Are we dealing in all this merely with sexual difference? Scarcely. The disciplinary practices I have described are part of the process by which the ideal body of femininity - and hence the feminine body-subject - is constructed; in doing this, they produce a 'practiced and subjected' body, that is, a body on which an inferior status has been inscribed.'(1988:71).

This is the mode in which it has been argued feminists should use Foucault's work on power. That is, not to seek the 'origin of tyranny' but to examine 'the interactions and the histories of daily occurrences that sustain systems of normalisation and control'(MacWhorter, 1986). That is, feminists should not search backwards for an answer to women's subordination, but concentrate on the ways in which women are kept subordinate to men through the operations of these subtle techniques.

Feminist Use of Foucault's Notion of Power/Knowledge

Power/knowledge is a concept which straddles all three of the sections of this chapter (power, sexuality and discourse). I shall discuss its implications in the following two sections, but briefly it can be stated here that feminist work has drawn upon the notion that power produces knowledge and that the further use of this knowledge can produce power effects. In some ways this reflects long-standing feminist concerns, for example, in the area of medical knowledge, feminists have argued that men have been instituted as knowledgeable about medicine, and have formulated knowledges about women's bodies that feminists reject (Ehrenreich and English, 1979). This knowledge both depends upon the operations of power and has power effects. The notion of power/knowledge has also been used to pose new questions for feminist work. The feminist journal *m/f* explored various objects of knowledge and 'the conditions of the production of such objects [of knowledge]', including the objects central to feminist knowledge (Adams and Cowie, 1990:351-2). One area where Foucault's concept of power/knowledge has been used is within feminist analyses of law. I shall discuss this work in Chapter Five, and be extending its usage throughout the thesis. A major problem that has been identified for a feminist use of the concept of power/knowledge is how to understand feminist knowledge, and the implications for feminist claims of truth. I shall discuss this problem below in the third section 'Discourse, Truth, Politics'.

In this section on power, I have explored, first, the major problem that Foucault's work on power has for feminist theorising which concerns the juridico-discursive model of

power and secondly, the potential uses of Foucault's work on power for feminism through a discussion of where writers have seen tools for feminist analysis. The feminist response to Foucault's work on power has tended either to reject his thesis due to the lack of space for discussion of women's subordination as a group, or to concentrate on the usefulness of his arguments on disciplinary power or power/knowledge. In my discussion of the first of these responses, I have argued that to some extent feminism and Foucault have moved towards each other, feminism resisting the depiction of women as victims, or as never exercising power, and Foucault conceding in a late interview that there is justification for a notion of 'domination'. The second response has been the more positive use of Foucault. The operations of disciplinary power have been convincingly applied to feminist research, as has the notion of power/knowledge. However, in this thesis I intend to explore the spectrum of arguments that are contained in Foucault's work on power. I intend to engage comprehensively with Foucault's arguments on power through an extended discussion of feminist work on incest.

Sexuality, Gender and Sex

In this section, I explore the issues that arise when one confronts THS through its arguments on sexuality, still with reference to feminist concerns. The argument that sexuality is socially constructed is not a contentious one for feminism. Feminists have explored the social construction of sexuality for many years and continue to do so (Jackson, 1978; Vance, 1984; for review see Barale, 1986). Yet, as suggested in Chapter One, such a reductive reading of Foucault, that is, one that simply condenses his argument into the proposition that sexuality is socially constructed, (one that has been given to his work by feminists as well as others), only scratches at the surface of his argument, and avoids addressing the problems his work has for feminism. Foucault's project is not just to state or argue that sexuality is socially constructed, but to trace, through a historical interrogation, the various networks of power and knowledge that have surrounded and deployed this sexuality. In this section I explore two areas at which there are potential 'stumbling blocks' between feminism and Foucault. The first concerns the place of 'omission' of gender in THS: Can feminism really make use of a thesis on sexuality which ignores gender? The second concerns the question of the construction of biological sexual difference: Is the division male/female itself a discursive construction?

Sexuality and Gender

One of the central questions that has been raised about Foucault's work concerns the absence of any investigation of the place of gender in THS. It is an often repeated criticism that Foucault disregards gender (Schor, 1988; Diamond and Quinby, 1988). In this section I shall explore this charge against Foucault through the following steps:

1. I shall make the point that the critique of Foucault cannot simply be that he ignores women in THS, since he does refer to women. The charge is really that Foucault ignores *gender* as a *structuring* principle of THS.
2. I shall ask: why do feminists argue that a text on sexuality should discuss gender? There are different ways in which feminists might answer such a question.
3. I shall explore the two lines of defence that Foucault might take to the charge that he ignores gender in THS. The first of these defences rests upon the process of 'normalisation'. The second on the argument that THS is about sexuality and not about gender. This second line of defence forces one back to (2), the arguments about why a work on sexuality should discuss gender. It also highlights a debate which has taken place within feminism itself on the question of the relationship between sexuality and gender. It is argued that the question is a complex one, and whilst there is no unanimous argument from feminism on this question, Foucault's defence is a weak one.
4. Leaving Foucault's lines of defence, I turn to a piece of work which has differently approached this question of the lack of gender analysis in Foucault. De Lauretis (1987) uses the methods and ideas of Foucault's THS in theorising, from an anti-essentialist position, the construction or 'deployment' of gender. In a sense her work 'by passes' the debate about Foucault's lack of interest in gender. I argue that whilst De Lauretis' work opens up ways in which feminists might use Foucault, she ignores the ways in which gender is interwoven in the thesis of THS. In some ways, the work of Hollway (1984), upon whom De Lauretis draws, is a better example of thinking through the issue of the relationship between sexuality and gender.
5. Finally, I conclude that the ways in which representations of men and women are scattered through THS can be built into an analysis of gender such as that of De Lauretis and Hollway. However, there must be, and this is the criticism which can legitimately be levied at Foucault, discussion of the differential construction of men and women, and the power strategies that may be attached to that differential construction.

1. *Making the Criticism: What About Gender?*

It has been suggested that the history of sexuality would be different if it were written by a woman.

'In the *Will To Power* (THS) we are introduced to a History of Sexuality wherein the notion that the history of sexuality might be different if written by women is never entertained; a single universal history is presumed to cover both sexes, as though History and, more importantly, the Historian of sexuality himself had no sex.' (Schor, 1988:107).

Diamond and Quinby (1988) speculate upon those aspects of sexuality which Foucault has left out because he has not considered those aspects of sexuality that most affect women and on which women have written. They introduce the essays contained in the volume they edited with the following argument:

'These analyses expose the gaps in Foucauldian genealogies that purport to detail disciplinary power's operations in the deployment of sexuality while overlooking women's writings on issues like pregnancy, abortion, birth control, anorexia...' (1988:xv).

There can be no doubt that Foucault's work is not written from a feminist perspective. As Meaghan Morris has remarked 'Foucault is a profoundly androcentric writer; it may be frivolous to say so (or worse, old fashioned), but one only has to flirt with the possibility of censorship in the act of translating his texts to feel 'homme ...' resound like a mantra' (1988:55).

This is not to say, however, that Foucault ignores *women* in THS. After all, one of the four strategies of the deployment of sexuality is the 'hysterisation of women's bodies', a process by which

'the feminine body was analysed - qualified and disqualified - as being thoroughly saturated with sexuality; whereby it was integrated into the sphere of medical practices, by reason of a pathology intrinsic to it; whereby, finally, it was placed in organic communication with the social body (whose fecundity it was supposed to ensure), the family space (of which it had to be a substantial and functional element), and the life of children (which it produced and had to guarantee, by virtue of a biologicomoral responsibility lasting through the entire period of the children's education): the Mother, with her negative image of 'nervous woman' constituted the most visible form of this hysterisation.' (1981:104).

Women also figure elsewhere, as part of the Malthusian couple, and as mothers exalted to watch over the sexuality of their children¹⁰. Although it is more tenuous, one

¹⁰ How a feminist history might challenge or corroborate these arguments would be found within historical projects (and Foucault's work has been one that feminist historians have

might even argue that the strategies surrounding the perverse adult and children include the female as much as the male.

The charge against Foucault is stronger than a lack of reference to women, or a lack of interest in those aspects of sexuality that affect women. The criticism is really that *as a structuring principle*, gender is absent in THS. As has been discussed in the section on power, Foucault's work was consistently pitted against structuring principles, especially binary ones. To posit such a principle at the outset was for Foucault to avoid the possibility of seeing how things work. That feminism has gender as its structuring principle may well be the greatest stumbling block to their meeting, and an insuperable obstacle to a completely harmonious feminist use of Foucault. Nevertheless, one can still investigate Foucault's lack of interest in gender in THS without seeking a perfect feminist/Foucault harmony, although, if Foucault's work on sexuality is to be of any use of feminism, such an investigation has to proceed further than a simple pointing out of the references he does make to women.

2. *Why Should A Text on Sexuality Discuss Gender?*

In making the criticism that gender is not a structuring principle of THS feminists imply that the relationship between gender and sexuality is such that Foucault *should* have made gender a structuring principle. Without this basis from which to argue, the criticism that he 'leaves out' gender is not a very strong one. Why do feminists see gender as important in a work on sexuality? There are three arguments that one can imagine feminists might make to this end:

i) women's specific experiences. Feminists have considered how social practices that surround sexuality take a form such that women have a particular experience to be told or are, as a group, oppressed through these practices. Examples here would be the ways in which abortion and child birth have been medicalised, and the dangers of contraceptive methods. The argument against Foucault from this perspective would be that he fails to consider those aspects of sexuality that are the most common areas of women's experience. Where he does hint at women's experiences of sexuality, such as in the 'hysterisation of women' he does not pursue them. Thus there are 'gaps' in his thesis. This is the sort of argument that Diamond and Quinby (1988) seem to be putting forward (see above) and one

drawn upon eg. Walkowitz, 1980). My questions are not concerned with the accuracy of Foucault's historical evidence, but address this absence of gender analysis on a theoretical level.

which, pointing to the *breadth*, the scope, of Foucault's analysis, does not do much damage to the basis of his arguments.

ii) the social construction of heterosexuality. By and large, feminist work on sexuality initially approached its theorisation of sexuality through the study of gender. Thus the social construction of sexuality has been approached as another aspect of gender socialisation. Since socialisation tends to presume that girls will lead heterosexual lives, heterosexuality was the main target of the feminist work. The socially constructed nature of heterosexuality was illustrated by various feminist writers (Jackson, 1978). In a particular influential argument, Rich (1980) argued that heterosexuality was compulsory, imposed through both violent and ideological channels. Feminists have debated the ways in which compulsory heterosexuality is useful to particular men and to male supremacy generally. It has been argued that heterosexuality means that women will serve individual men, ensure the reproduction of species and prevent women from forming bonds against men. The argument against Foucault from this perspective would be that he fails to deal with the most oppressive aspect of sexuality as far as women are concerned: the construction of heterosexuality. Thus the charge against Foucault would be that not only does he leave out any discussion of gender, he fails to pick up on the clearest connection between gender and sexuality which is the construction of heterosexuality.

iii) MacKinnon's argument: sexuality is the central mechanism of gender oppression. Catherine MacKinnon (1982; 1987; 1989) has argued that sexuality is the key to women's subordination. Her argument differs from ii) because not only does she see sexual power as at the root of men's power, she prioritises sexuality over gender. Both developmentally and in substance, MacKinnon contends, all that we have previously named gender is in fact (hetero)sexuality (1982:531). She argues that the construction of heterosexuality is the process through which men and women are *engendered* and women subordinated to men:

'Women and men are ... made into the sexes as we know them by the social requirements of heterosexuality, which institutionalises male sexual dominance and female sexual submission. If this is true, sexuality is the lynchpin of gender inequality.'(1982:516).

In the following, I shall be concerned with the second and third of these arguments because, as suggested, the first is an argument about the scope of Foucault's thesis and not so much about his analytic arguments. The second and third arguments are not resolved by extending Foucault's arguments to other areas, because they see more fundamental flaws in Foucault's thesis.

3. In exploring the 'omission' of gender in THS I shall suggest and pursue two imagined lines of defence that Foucault might take to the charge that his thesis is flawed due to his lack of interest in gender as a structuring principle. These defences seem to me the only ways in which Foucault could defend THS against the above criticisms. The first rests on his arguments about how the process of 'normalisation' occurs. The second focuses on the relationship between sexuality and gender, the argument that THS is about sexuality not about gender. Both of these lines of defence touch on important issues for feminism. My intention in this section is not to 'patch up' Foucault's THS in order to remould it into feminist text. The purpose is instead to see how it might be useful for feminist theorising. This question keeps the emphasis on the possibilities of using Foucault as opposed to an attempt to search out and rectify 'gaps' in THS.

The First Line of Defence: Normalisation

Foucault's first imagined line of defence is that which responds to arguments about heterosexuality made in both the feminist arguments (ii and iii) by pointing to processes of normalisation. According to this defence, the deployment of sexuality takes place at the 'periphery' and through the activity that takes place at the periphery, constructs and regulates the norm of monogamous heterosexuality. Foucault argues that certain sexual acts were once regarded as 'against the law', with the 'especially abominable' stamped as 'contrary to nature' (1981:38). With the discursive explosion of the eighteenth and nineteenth centuries, however, the division between licit and illicit acts gave way to a more complex way of talking about sex. The image of the line (licit/illicit) becomes the image of a circle, with heterosexuality operating as a norm in the middle. There was, Foucault argues,

'a centrifugal movement with respect to heterosexual monogamy. Of course, the array of practices and pleasures continued to be referred to it as their internal standard; but it was spoken of less and less ... Efforts to find out its secret were abandoned; ... it tended to function as a silent norm, one that was stricter, perhaps, but quieter. On the other hand, what came under scrutiny was the sexuality of children, mad men and women, and criminals; the sensuality of those who did not like the opposite sex; reveries, obsessions, petty manias, or great transports of rage.' (1981:38-9).

Therefore, Foucault would argue, his history of sexuality does not discuss discourses on heterosexuality because heterosexuality is not constructed directly, but indirectly, as the 'internal standard' of the strategies of the deployment of sexuality. His thesis does concern heterosexuality in a very important sense because heterosexuality is the implicit norm, the centre which these strategies operate around. These peripheral

strategies work to create and maintain heterosexuality, to police it even as they do not directly operate upon heterosexuality.

How could feminist work respond to/use this argument of Foucault's? One could make an empirical observation that there *has* been a discourse on heterosexuality, one that is a central discourse on sexuality. Heterosexuality has been spoken about and represented in Western societies as the accepted form of sexuality. It has not been a particularly *silent* norm: the mass media, literature, sexual education, and other areas of cultural life promulgate a continuous discourse presenting heterosexuality as the only sexuality (thereby implicitly promoting it as such). Foucault's ^{reply} would be that heterosexuality has not been problematised in the same way that the 'periphery' have. It is not the site of activity and object of medical and psychological knowledge as have ^{been} the sexualities he has discussed. The 'Malthusian couple' did not have their heterosexuality problematised in the sense that they were not forced to speak of why they were heterosexual and how they practiced heterosexuality, but were encouraged instead to *control* their heterosexuality, to behave 'responsibly' with regard to society as a whole. A feminist perspective would agree that those discourses promoting heterosexuality often focus on the dangers and abnormality of sexualities which exist outside heterosexuality, and that those places where heterosexuality is explicitly problematised, eg. on the problem pages of women's magazines, often continue nevertheless to promote heterosexuality.

This encounter with Foucault highlights the arguments that feminism has made about the ways in which the promotion of heterosexuality takes place alongside discourses on the dangers and abnormality of other forms of sexual behaviour. That is, as well as arguing that heterosexuality is socially constructed and presented as the natural sexuality as children mature, feminists have illustrated how homosexuality is presented as abnormal, not merely by those who are openly hostile, but also by those who adopted a 'caring', corrective approach (Kitzinger, C. 1987).¹¹ This form of argument is an important one to feminist arguments that have moved away from theorising sexuality as simply added onto gender as part of gender socialisation. The use of Foucault would endorse this

¹¹ The normalisation of heterosexuality, moreover, throws together several different types of sexual behaviours that are all considered 'deviant' despite their differences. Thus lesbianism and gay homosexuality have been problematised, from Havelock Ellis on, alongside several other sexual practices including those that are non-consensual.

approach, stressing that the strategies which present heterosexuality as normal and those which deter other forms of sexuality work in conjunction with one another.¹²

However, as a defence to the charge under discussion, the 'normalisation' argument is very much an implicit one in *THS*. Furthermore, although normalisation may be a useful concept for feminism, the implications of such normalisation for gender relations and the power relations amongst those living within heterosexuality are not drawn out in *THS* even where one would expect a discussion of gender relations, such as when Foucault discusses the Malthusian couple, where both the man and woman are targets of the same strategy of the deployment of sexuality. There are important issues here for feminism, and I shall return to this point below (in 5.).

The Second Line of Defence: Sexuality not Gender

The second imagined line of defence would be one which argues that the thesis of *THS* concerns sexuality, and that it is not about gender. This forces an answer to the question 'why should a text on sexuality discuss gender?' The three reasons stated above introduce the sorts of arguments that feminists might make against Foucault. However, this question is a difficult one. The theorising of the relationship between gender and sexuality is by no means unresolved within feminism itself. There has been a dispute between Catherine MacKinnon (1982; 1983; 1987) and Gayle Rubin (1984) on exactly this question. I shall briefly discuss the debate between these two feminists in order to illustrate the complexity of the question of the relationship between sexuality and gender. It will become clear that whilst feminism cannot give a unanimous analysis concerning the relationship between sexuality and gender, feminism has certainly begun to address the issues involved here, whilst Foucault did not.

Within the context of her argument that sexual power is the fundamental power that men have over women, MacKinnon suggests that on a close reading, each element of what has been termed the feminine gender stereotype is revealed as sexual:

'Vulnerability means the appearance/reality of easy sexual access; passivity means receptivity and disabled resistance, enforced by trained physical weakness; softness means impregnability by something hard. Incompetence seeks help as vulnerability seeks shelter, inviting the embrace that becomes the invasion, trading exclusive access for protection

¹² This argument also has relevance to MacKinnon's arguments because MacKinnon concentrates on heterosexuality as central to women's subordination. In doing so, she has been criticised for not finding a space for women's desire outside men's construction of it (Valverde, 1989). The position of lesbianism in MacKinnon's thesis is left largely implicit. It seems to exist somewhere outside of power.

... Lesbians so violate the sexuality implicit in the female gender stereotype as not to be considered women at all.'(1982:530).

The developmental process of 'becoming a woman', what feminism has named gender socialisation is, for MacKinnon, a process of identifying oneself as a sexual being. For women, this means identifying herself as a sexual object in opposition with men as sexual actors, as subjects. She argues that women internalise a male image of their sexuality as their identity as women (1982:531). One becomes a woman not through physical maturation, nor through learning appropriate role behaviour, as early feminist analyses suggested, but through the experience of sexuality. Thus MacKinnon arrives at the argument that sexuality determines gender, not, as various feminist analyses had supposed¹³, the other way around. Sexuality and gender are for MacKinnon, one and the same thing.

Against MacKinnon, Gayle Rubin (1984) has argued that sexuality and gender have to be separated analytically. Rubin argues that the system of sexual (desire) oppression cuts across other modes of inequality so that it is not understandable in terms of class, race or gender. Lesbians, for example, are oppressed as women by the system of gender oppression *and* for their stigmatised sexuality by the system of sexual oppression. Rubin argues that there is only one truly acceptable form of sex, that is heterosexual, monogamous, vaginal and within marriage to which all others are, in varying degrees, stigmatised. Although she agrees that the two are related, Rubin maintains that gender and sexuality belong to separate systems of oppression.¹⁴

This disagreement between MacKinnon and Rubin turns on how one conceives those aspects of life Rubin designates outside sexuality: the family, education, the state, the media, job discrimination and unequal pay. These would be spheres of gender oppression according to Rubin, not of sexual (erotic) oppression. MacKinnon's reply would be that these areas are also traversed by power relations concerned with sexuality. For

¹³ Through an analysis which saw heterosexuality directed at girls/women and boys/men as already gendered beings. That is, sexuality overlaid on gender.

¹⁴ Rubin draws upon Foucault in her work, and uses THS as support for her own position that sexuality and gender are separate systems of oppression. However, if our project here is to explore the possibility of a fruitful Foucault/feminist meeting, Rubin's work does not give us an unproblematic synthesis. The notion of systems of oppression is still premised upon a rigid, categorical structure and a repressive model of power (one that operates to repress the 'unacceptable' forms of sexuality) that is anathema to Foucault. The solution for Rubin, moreover, seems to be the liberation of those forms of sexuality previously repressed, a notion of which Foucault is highly critical because of its appeal to a fundamental and natural sexuality that will thereby be liberated. Thus although Rubin draws on Foucault her theoretical approach is not particularly Foucauldian.



example, job discrimination according to a MacKinnon line of argument, would not be a purely economic oppression by gender, but an instance in which the heterosexist assumptions about women's sexuality, women's reproductive roles and about women as merely sexual objects come to the fore so that women's applications for jobs are not treated with the same attitude as men's. MacKinnon's definition of sexuality is therefore much wider than Rubin's, so that it encompasses those areas of life Rubin regards as non-sexual: motherhood, the family, media representations of women and so on.

The MacKinnon-Rubin debate illustrates that pursuing the criticism that Foucault does not discuss gender in relation to sexuality takes one into a complex and contested area of feminist theorising. Although sexuality and gender are always regarded in feminist thought as at least closely related processes and entwined within experiences, there is no simple answer to exactly how they are to be conceptualised in relation to each other.

Thus, it would seem that feminists cannot give an unanimous reason why a work on sexuality should discuss gender because the relationship between gender and sexuality is a site of controversy in feminism itself. However, there is definite agreement within feminism that the relationship between gender and sexuality is of importance and of a complexity such that Foucault's lack of comment on gender cannot be excused simply on the grounds of writing about sexuality. THS ignores how any consideration of how sexuality and gender are entwined (which they are completely, for MacKinnon, and at crucial points, for Rubin). I shall return to this question of the relationship between sexuality and gender below. First I discuss an alternative approach to Foucault's 'omission' of gender.

4. *An Alternative Approach to the 'Omission of Gender': De Lauretis and Hollway*

An alternative approach to the 'omission' of gender in THS is that taken by Teresa De Lauretis (1984; 1987). De Lauretis' work can be seen within the context of a larger movement in feminism that has made a strong anti-essentialist move, that is, a move away from theorising all women (and men) as gendered simply by virtue of some programme of behaviour flowing from their anatomical sex (something most if not all feminists have abandoned) but also away from a theorising of women as the embodiment of some unified representation of women. The argument against such a theory of sexual difference is that it homogenises women, by failing to take account of differences among women, and homogenises the representations of women, by suggesting that the representations faced by women form a unity or are, at least, compatible. Current theories of gender constrain feminist thought, she argues, because they reduce differences among

women to either 'different embodiments of some archetypal essence of woman, or more or less sophisticated impersonations of a metaphysical-discursive femininity'(1987:2).¹⁵ Seeing in Foucault a route away from these essentialist tendencies, De Lauretis applies Foucault's central arguments on sexuality wholesale to a discussion of how gender is 'deployed'. Her argument is that gender, as well as sexuality, is a product of disparate power/knowledge strategies.

In De Lauretis' theory gender is formed in much the same way that Foucault describes the case for sexuality, that is, it is deployed through the operations of several 'technologies', mechanisms of power. De Lauretis begins with the argument that the notion of gender in feminist work is too bound up with that of sexual difference such that 'gender' is beginning to denote a difference between men and women that is as rigid and straightforward as the term 'sex' was once used. There is need for a conception of gender, De Lauretis suggests, that is

'not so bound up with sexual difference as to be virtually coterminous with it and such that, on the one hand, gender is assumed to derive unproblematically from sexual difference while, on the other, gender can be subsumed in sexual differences as an effect of language, or as pure imagination, nothing to do with the real.'(1987:2).

Here De Lauretis is referring, first, to the way in which feminism's demonstration of the social construction of gender has become understood in such a way that the social roles (gender) are assumed to be unproblematically 'mapped' onto the appropriately sexed bodies of children. Thus the use of the term 'gender' has replaced the term 'sex' without any theoretical rethinking of the complexity and contingency of the process. Secondly, one assumes, De Lauretis is referring to accounts that stress the process of language in the construction of sexual difference (such as those of and influenced by Lacan) in such a way as to displace discussions of the operations of power.

The starting point for a superior conception, De Lauretis argues, is to be found in the work of Foucault. What she suggests is the transposition of Foucault's arguments on sexuality to the study of gender. She suggests that feminists might

'think of gender along the lines of Foucault's theory of sexuality as a 'technology of sex' and to propose that gender too, both as representation and as self-representation, is the product of various social technologies, such as cinema, and of institutionalised discourses, epistemologies, and critical practices, as well as practices of daily life.'(1987:2).

¹⁵ Furthermore, they prevent the possibility of theorising the subject not as engendered solely through sexual difference, but as also engendered through the multiple experiences within which a person moves, including those of class and race.

De Lauretis notes that Foucault did not consider how social technologies have differentially affected men and women. She notes that Foucault ignored the 'conflicting investments of men and women in the discourses and practices of sexuality'. However, De Lauretis regards this as an exclusion of gender that merely excludes without *precluding* the consideration of gender. De Lauretis proceeds with her analysis of the reproduction of gender through various technologies.

For De Lauretis, gender is the relation between the two classes of individuals that the relation itself creates. Through a process similar to Althusser's interpellation¹⁶, the representation of gender is continually marked upon individuals who then represent themselves as members of that gender. This is, therefore, an on-going process. Feminist theory, De Lauretis suggests, has to be located within the tension between Woman as the representation of the essence of all women and women, the historical beings and social subjects who are defined by the technology of gender and actually engendered in social relations. This contradiction is the possibility of feminist theorising, as women persist within social relations even though we know we are not 'that'. Thus feminism is both within and outside gender, especially in the sense that it reconstructs gender even as it deconstructs it (something which Black feminists have exposed, eg. hooks, b. 1982). However, argues De Lauretis,

'We cannot resolve or dispel the uncomfortable condition of being at once inside and outside gender either by desexualising it (making gender merely a metaphor, a question of difference, of purely discursive effects) or by androgynising it (claiming the same experience of material conditions for both genders in a given class, race or culture).'(1987:11).

Thus for De Lauretis, gender is 'implanted' just as Foucault argues for sexuality. Her essay 'Technology of Gender'(1987), regards both sexuality and gender as discursively informed but not as necessarily uniform nor even complementary either at the level of discourse or at that of expression. That is, the process of subjectification involves the occupation of a space within both discourses of both sexuality and gender that may be linked but may also be contradictory. The individual may also resist conventional discourses, as well as negotiate and reformulate discourses.

In her discussion of gender, however, De Lauretis gets drawn into a discussion of sexuality, as she begins to reflect on Foucault's *THS*. Nevertheless, it seems that for De Lauretis gender is in some sense 'bigger' than sexuality, so that sexuality is one site of the

¹⁶ Interpellation is the process by which an individual is 'hailed' by ideological constructs in much the same way that a response to a shout in the street involves the respondent in some process of recognising herself in the call.

reproduction of gender. In discussing sexuality, De Lauretis is critical of Foucault, because he does not explore sexuality as gendered, as having a masculine and a feminine form (1987:14). For De Lauretis, sexuality as a construct and as a (self-) representation is gendered. She draws on the work of Hollway (1984) to expand this claim.

Hollway's work is indebted to Foucault, but insofar as she studies the reproduction of gender within discourses of sexuality, Hollway's work departs from Foucault's concerns¹⁷. In an investigation of discourses of heterosexuality, Hollway argues that there are different gender positions embedded within the discourses through which and by which people understand and express their (hetero)sexuality. For example, a discourse of romantic love which Hollway terms the 'have/hold' discourse contains certain roles related to each gender, as do other discourses on heterosexuality, such as the 'male sexual drive' discourse. In drawing upon such discourses, speakers take up a gender position and therefore position themselves within a *gender* relation. The gender differentiated content of discourses on heterosexuality, Hollway shows, prevents individuals speaking except within their terms (although they may also operate in such a way as to alter these terms over time as Foucault's notion of a reverse discourse suggests). The effect is that discourses on sexuality contain, construct and deploy gender relations. Thus, De Lauretis argues, are female subjectivity and experience couched in a specific relation to sexuality. The discourses of sexuality which engender women, she suggests, contain and implant (however imperfectly) a gender differentiated content.

De Lauretis' work is illuminating, but her 'tactic' of using Foucault's framework to study gender does not easily resolve the question of the relationship between sexuality and gender. De Lauretis reintroduces sexuality into her discussion of gender in the explication of what the feminine gender is. This would seem to suggest that sexuality and gender 'overlap' in some sense, as she seems to argue, via Hollway. My argument in the next section is that just as sexuality creeps back into De Lauretis' work on gender, her tactic of applying Foucault's arguments on sexuality to gender ignores the way that gender is interwoven in the thesis of THS.

5. *Towards a Feminist Use of THS*

In my argument I refer back to the references to gender in Foucault's THS. As argued at the beginning these references cannot be regarded as evidence of an analysis of gender as a structuring principle, nor of an interest in gender on Foucault's behalf.

¹⁷ Hollway also argues that in order to speak of subjectivity, one needs to incorporate the psychodynamic perspective of Lacan into her Foucauldian framework (1989:83).

However, seen in the light of the preceding discussion, these references might be seen as evidence of the way in which a work on sexuality cannot easily avoid discussion of gender. As the MacKinnon-Rubin debate illustrates the two are so closely interconnected that it would be difficult to completely ignore gender when speaking of sexuality.

Following De Lauretis, one can argue that just as sexuality is not implanted through one strategy but is a construction resulting from the interconnections of several strategies at work, so is gender. But furthermore, one can argue that these deployments can take place simultaneously. In Foucault's *THS* there are a number of representations of women dispersed across the strategies of the deployment of sexuality. There is the mother, who gives life to and cares for her children (in relation to the hysterisation of women), and who watches for signs of sexuality in her children (in relation to the pedagogisation of children's sex). There is the nervous woman, who is the 'negative image' of the good mother, the hysterical woman, intrinsically pathological and driven by her biology, and the female responsible adult in the Malthusian couple. These various representations of women are about the deployment of different forms of femininity at the site of sexuality. (There are also representations of men in the deployment of sexuality: as careful father, as perverted and sexually driven, as masturbating boy-child).

But Foucault is not interested in the *relation* between men and women that the different constructions of masculine and feminine deploy. The gender relations contained within these various representations of men and women are not investigated nor even noted.

Thus the feminist charge against Foucault's *THS* should not be simply that Foucault 'omits' gender but that

1. He fails to see the *engendering* aspects of sexuality that, in their different theoretical frameworks, each of the feminists discussed regards as central. There are the constructions of men and women contained within and as a part of the strategies of sexuality which Foucault cannot avoid mentioning, but to which he pays no attention. Feminist analysis would ask whether there are repetitive patterns to be discerned in the roles that the discourses of sexuality make available to men and women.
2. Further, Foucault fails to draw out the *differential* construction of gender at the site of sexuality. Although he is interested in the ways in which human beings are subjectified through the various strategies of the deployment of sexuality, he does not consider the relations *between* these various subjects except in a comment that others will 'recognise' and affirm the individual's subjectivity: 'This form of power ... categorises the individual

... marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognise and which others have to recognise in him. It is a form of power that makes individuals subjects.'(1982:212). By contrast, feminist work such as MacKinnon's, is interested in the way in which men and women are engendered differently, and the consequent relation *between* them as members of two opposing groups. MacKinnon's interest is in the objectification of women within the discourse of heterosexuality. She considers the ways in which discourses of sexuality repeatedly construct women as the object of male sexuality. Thus she is interested not just in the ways in which women and men 'turn themselves into sexual beings'(Foucault, 1982:208), but in what these processes of subjectification mean for those subjectified, that is, for the *relation* between women and men.

3. Linking back in with the section above on power, this lack of interest in the construction of gender, of men and women as different, means, finally, that Foucault's THS does not consider the power relations that may be entwined with this 'deployment of gender'.

Using THS within a feminist project, therefore, means addressing the ways in which gender construction takes place at the site of sexuality, the ways in which gender relations are formed and power relations entwined with these relations.

Sexuality and Sex: Barbin and Butler

The moment of interpellation in De Lauretis' work is also a moment of recognition of something about one's body, that is, one's sex: male or female. Although gender is discursively constructed in De Lauretis' work, the status of sex in her work is less clear. A different use of Foucault's work has been taken by Butler (1990). Concentrating on the 'fact' of biological sex, Butler uses his work to challenge the division male/female which is the point of departure of much feminist thought. She uses his work to probe and reflect upon our usage of the term, to 'disturb what was previously considered immobile'(Nietzsche, 1947, quoted in Phelan, 1990:423). Her question is: what if, as well as sexuality and gender, sex were an effect of discourse? The question this poses for feminism is that, if so, would the use of Foucault leave feminism without a subject 'women' by deconstructing the division male/female on which to found theorising?

In THS Foucault poses himself a question:

'People are going to say that I am dealing in a historicism that is more careless than radical; that I am evading the biologically established existence of sexual functions for the benefit of phenomena that are

variable, perhaps, but fragile, secondary, and ultimately superficial; and that I speak of sexuality as if sex did not exist. And one would be entitled to object as follows: '...for you, there remain only groundless effects, ramifications without roots, a sexuality without a sex.' (1981:150-1).

How Foucault responds to this pre-empted question raises problems for a feminist utilisation of his remarks, although it is also highly ambiguous. His response is in two parts. With the first feminists would agree. He argues that the analysis of sexuality does not necessarily imply the 'elision of the body, anatomy, the biological and the functional' (1981:151). He argues, on the contrary, that the purpose of his study is to show how the biological is not 'consecutive' to history but is bound to it as modern technologies of power take life as their object. Power works on the body. The movements of the body and our understanding of the body are themselves effected by power. It is in Discipline and Punish that Foucault shows this most clearly, through his analyses of the powers of discipline, the micro-techniques that produce docile and useful bodies. The second response Foucault makes here is however, more contentious and more problematic for a feminist project. He argues

'it is precisely this idea of sex in itself that we cannot accept without examination. Is 'sex' really the anchorage point that supports the manifestations of sexuality, or is it not rather a complex idea that was formed inside the deployment of sexuality? In any case, one could show how this idea of sex took form in the different strategies of power and the definite role it played therein.' (1981:152).

Although he is far from clear on this point, Foucault puts into question the way that the term 'sex' is used. He hints that it is the site of controversy, and that it may be a site of controversy for gender relations¹⁸: 'in the hysterisation of women, 'sex' was defined in three different ways: as that which belongs in common to men and women; as that which belongs, par excellence, to men, and hence is lacking in women; but at the same time that which by itself constitutes a woman's body.' (1981:153). Butler takes Foucault's remark to its logical conclusion through a questioning of any discourse that speaks of male and female as givens. She begins therefore to question the understanding that there is, if not two homogeneous groups composing the sexes - men and women - , at least some group - women - in whose interest feminism is mobilised. Theories of gender, Butler suggests, may have to rethink the notion of sex. Butler draws upon Foucault's introduction to the memoirs of Herculine Barbin, 'a nineteenth century French hermaphrodite' (1980).

Barbin was brought up as a girl and lived as a member of the female sex until, after some time of considerable confusion, she speaks to a doctor about her anatomy and

¹⁸ A rare if not unique passage for this concern in THS, as discussed above.

her feelings toward another woman. The doctors and other authorities decided to label her male, and she was henceforth legally obliged to dress as a man. Her journals 'report a sense of perpetual crisis that culminates in suicide.' (Butler, 1990:98). In his introduction to the memoirs, Foucault makes or rather sketches an analysis of the discursive construction of two sexes (1980:i-xiii). He argues that for a long time hermaphrodites were believed to have two sexes, and the suggestion that they had a true underlying sex, either male or female, the notion that plagued Barbin's life, was not made. Biological theories which suggested that sexuality flowed from anatomical sex, judicial conceptions of the individual and the administrative controls of modern nations all led, Foucault suggests, to a rejection of the idea that a body could have two sexes. Thus where previously it had been the individual's choice, the doctor now became the expert and his task in such cases was to determine what was hidden beneath the ambiguous appearances of such individuals. Doctors imposed on Barbin's body, Foucault argues, a 'game of truth' (1980:xiii), and 'in an order of things where one might have imagined that all that counted was the reality of the body and the intensity of its pleasures' (1980:vii) they demanded that each individual has a true sex which had to be 'obeyed'.

Butler reads Foucault's argument as an illustration of how 'an hermaphroditic or intersexed body implicitly exposes and refutes the regulative strategies of sexual categorisation' (1990:96). The possible antithesis with feminism is put by Butler:

'Where feminism takes the category of sex and, thus, according to [Foucault], the binary restriction on gender, as its point of departure, Foucault understands his own project to be an inquiry into how the category of 'sex' and sexual difference are constructed within discourse as necessary features of bodily identity.' (1990:96).

Butler investigates the argument that sex is not a fact of anatomy, but a 'fact' created by discourse: 'Is 'the body' or 'the sexed body' the firm foundation on which gender and systems of compulsory sexuality operate?' (1990:129). Butler argues against the notion that each body has a sex, an underlying force or truth within the body that causes the anatomical shape of the body. This is the 'trope of interiority' (1990:134), the notion that anatomy is the sign of (an inner) sex. Where feminists have argued that gender is not within the body but a cultural/discursive phenomenon, Butler argues for a similar move with regard to 'sex'. It is a way of talking about our selves, not an unproblematic 'fact' of anatomy. Butler recognises that Foucault wavers on his arguments about the body, sometimes speaking of the body as if it were a prediscursive materiality (at a couple of points in *THS*), but at others as the 'inscribed surface of events' (1986a). Nevertheless, Butler uses his approach to argue that the designation of sex is a discursive operation.

For Butler gender is 'performative', constituted by the various acts of gender, 'fabricated, manufactured and sustained through corporeal signs'(1990:136). Gender is

'a construction that conceals its genesis, the tacit collective agreement to perform produce and sustain discrete and polar genders as cultural fictions is obscured by the credibility of those productions.'(1990:140).

Butler convincingly argues that there has to be an analytical separation between anatomical sex, gender identity and gender performance. She illustrates her argument with reference to drag (men dressing and acting as women). She argues that drag is a pastiche of gender, an imitation that mocks the notion of an original (1990:138). It effectively mocks both the expressive model of gender (that gender expresses sex) and the notion of a true gender identity (that gender identity is biological and/or fixed). It is a performance that reveals the imitative structure of gender itself.

'The performance of drag plays upon the distinction between the anatomy of the performer and the gender that is being performed. But we are actually in the presence of three contingent dimensions of significant corporeality: anatomical sex, gender identity, and gender performance. If the anatomy of the performer is already distinct from the gender of the performer, and both of those are distinct from the gender of the performance, then the performance suggests a dissonance not only between sex and performance, but sex and gender, and gender and performance.'(1990:137).

In conservative discourse, sex is spoken of as the internal cause of one's gender (and furthermore, of one's sexuality). In feminism, sex is often constructed as the 'hard' fact on which malleable gender constructions work. Butler's argument is that although obviously preferable to conservative discourses, feminism has not yet done enough deconstructing. Sex, as well as gender, is part of this strategy. As in Barbin's case, or in contemporary medical investigations¹⁹, the social processes that begin as soon as the anatomy is not easily classified highlights the fact that male and female are ways of talking about bodies, ways of categorising bodies into two mutually exclusive groups. Thus feminism's domain should not be only that of gender production and reproduction, but also that of the designation of sex. Otherwise argues Butler, in Foucauldian terms, feminism becomes 'an analysis which makes that category [sex] presuppositional [and thereby] uncritically extends and further legitimates that regulative strategy as a power/knowledge regime'(1990:96).

¹⁹ Butler discusses how this assumption informs scientific works on sex determining genes, and references Lowenstein 'The Conundrum of Gender Identification, Two Sexes Are Not Enough' *Pacific Discovery* 40:2 1987 pp38-9 (in Butler, 1990b:340).

This form of argument has been accepted by other feminist writers. Kaplan and Rogers (1990) have argued that the designation of labels 'male' or 'female' result from a process of decision making not a description of 'obvious' facts. There are several different combinations of outward signs, the internal organisation of reproductive organs and chromosomal 'evidence'. Moreover, medical knowledge and common sense can often disagree.

In terms of the aims of this chapter, Butler's arguments taken from her reading of Foucault's *THS* and 'Herculine Barbin: Being the Recently Discovered Memoirs of a nineteenth Century Hermaphrodite' (1980)²⁰, point to an antithesis between Foucault and feminism that centres around the status of the term 'sex' meaning the division male/female. Butler's arguments suggest that a Foucauldian feminism would not only investigate the relations between sexuality and gender but also bring in 'sex' as a third term to interrogate (and with it comes the interrogation of the status of the body in feminist theory).

Such a project is feared by some feminists, who see this move as leaving feminism without a subject ('women'). Alcoff argues that a position in which 'the category 'woman' is a fiction' leads only to 'a negative feminism, deconstructing everything and refusing to construct anything.' (Alcoff, 1988:417-8). Others have argued that feminism should engage in 'simultaneously using and questioning the category 'women''. Common sense tells us that it is a real category, so much so that our political agenda must be shaped by it, and yet we may question its history and its use.' (Phelan, 1990:434). This use of Butler's reading of Foucault is the strategic one. However, in following this line of argument, it is worth making a point similar to that made by Bordo (1990a). Bordo makes the argument that the refusal to use the category 'women' on grounds of its false inclusivity can become a methodological imperative. She argues that whilst generalisations about gender can obscure and exclude, there 'are dangers in too wholesale a commitment to either dual or multiple grids.' (1990a:149). The danger, she argues, is that the deconstruction of 'women' as caused by 'gender scepticism' may lead to the loss of feminism's political force such that the commonalities that women do suffer are left unaddressed. This point is also relevant to Butler's different form of 'gender scepticism'. The questioning of 'women' may be a useful tool for anti-feminists. Thus the theoretical position that Butler espouses must not obscure the subject of feminism even as it

²⁰ Her reading is a generous one, for Foucault's position does not seem as persuasive or consistent as Butler presents it.

is rethought as not straightforwardly 'women' but 'those persons who are labeled as and continually constructed as women'.

Butler's presentation of Foucault may appear threatening to feminism, for in its interrogation of the division male/female it seems to leave feminism without a subject 'women'. But her point is not to forestall a Foucault/feminist meeting, quite the contrary. The contribution that Butler makes to this discussion is in adding the term 'sex' to sexuality and gender as terms that should be scrutinised by feminists, not because women do not exist, but because the notion that they have a 'sex' located in the body is the foundation of several discourses that work to the detriment of women, and that obscure the social discourses that repeatedly attempt to 'pin' people to a sex and therefore to a gender, and therefore, to a sexuality (heterosexuality).

Discourse, Truth and Politics

The definition of discourse is no simple matter. For Foucault, it is both more and less than 'language'. It is less than 'language': discourse is not a description of a language system, it is not concerned with Saussure's 'langue', nor is it a term that can be applied to all spoken and written language. It is also more than 'language' because it is not just speaking and writing, but entails social relations, knowledge and power. Eagleton stresses this when he argues 'discourse means language grasped as utterance, as involving speaking and writing subjects and therefore also, at least potentially, readers or listeners.'(1983:115).

Although he treats it differently at different times, the importance of discourse runs throughout Foucault's work, most explicitly in The Archaeology of Knowledge (1972), where he is interested in developing a theory of discourses and a methodology for studying them, which he termed 'archaeology'. Archaeology is an historical method which is essentially a rewriting, a systematic description of a discourse object (1972:140). It focuses on the formation of specific knowledges without retreating to a discussion of the knowers: its focus is on the rules of formation of knowledges, rules defining objects, techniques and processes of validating knowledge. His concern at this time was with the identification of rules that govern 'discursive formations' unknown to the speakers within them. By THS, Foucault's concerns were less with the search for rules, regularities and formation of discourses and more with questions of the relationships between power,

knowledge and discourse²¹. During the period between these two works, furthermore, Foucault's own understanding of what he was doing altered. Whilst it still contained important aspects of archaeology, the later approach resulted from important changes in Foucault's philosophical understanding of his work. The later approach he named 'genealogy'.

Foucault describes his project in The Archaeology of Knowledge as an attempt to show that

'to speak is to do something - something other than to express what one thinks, to translate what one knows ...; to show that to add a statement to a pre-existing series of statements is to perform a complicated and costly gesture, which involves conditions (and not only a situation, a context and motives) and rules (not the logical and linguistic rules of construction); to show that a change in the order of discourse does not presuppose 'new ideas', a little invention and creativity, a different mentality, but transformations in practice, perhaps also in neighbouring practices, and in their common articulation.'(1972:209).

Foucault's interest in The Archaeology of Knowledge was in what Dreyfus and Rabinow term 'serious speech acts'(1986:48) and the discursive formations of which these speech acts form a part. The speech acts are serious when they have been validated by some sort of institutionalised test, with some community of experts to justify them as knowledge. The approach is a 'diagnosis'(1972:206) that looks at the state of discourses and the patterns they form. It seeks out the rules that place some form of constraint on what the speakers can say. It is an approach that does not concern itself with the truth of what is said but is more in the descriptive mode (1972:27), attentive to changes in discourses and the timing of statements:

'The analysis of statements then is a historical analysis but one that avoids all interpretation: it does not question things said as to what they were hiding, what they were really saying, in spite of themselves, the unspoken element they contain ...; but on the contrary, it questions them as to their mode of existence, ...what it means for them to have appeared when they did, they and no others.'(1972:109).

²¹ This is not to say that Foucault cut off discourse from other non-discursive aspects of social life in The Archeology of Knowledge. He has never argued that discourse is everything, and never denied that other factors such as economic, shape societies. His point was to move away from the general division between Discourse and the Non-discursive world and to focus instead on a specific discourse - such as that on sexuality - in order to question the power relations within and outside this discourse, the knowledges it uses and instigates and its effects, including its effects on other discourses. However, in TAK Foucault does seem to want to argue for or at least consider the autonomy of discourse in a way that he later does not (see Dreyfus and Rabinow, 1986:67,77-8).

By the time Foucault wrote THS, he had 'abandoned' archaeology and renamed his historical investigations 'genealogy'. The interest Foucault had had in the rules which governed discourses disappears, and, although discourses are still the object of study and the level at which Foucault's analysis 'enters', the abstract and generalised approach to discourse of The Archaeology of Knowledge is replaced by a more 'grounded' interest in the ways that discourse is both built upon networks of power/knowledge and produces certain power effects. Thus genealogy is the study of the concrete and disparate arrangements upon which knowledges and their respective 'objects' have been constructed and the power relations that are there entwined. Foucault's concern is that of how discourses, and their truth effects, that is, the ways in which they are acted upon and towards as True, are maintained by and function to uphold (or to resist or to alter) relations of power.

The archaeologist who 'diagnoses' discourses in relation to the broader 'reigning episteme'²² becomes the genealogist who begins from within them, reflecting on the world around him. Yet having begun in this way, the next manoeuvre is an archaeological one in which the genealogist 'can move one step back from the discourse he is studying and treat it as a discourse-object' (Dreyfus and Rabinow, 1986:106). Thus genealogy still contains elements of archaeology within it (Dreyfus and Rabinow, 1986:103-4).

One of Foucault's arguments in The Archaeology of Knowledge is that discourses, as opposed to being simply signs that refer to or represent some reality are

'practices that systematically form the object of which they are speak. Of course discourses are composed of signs; but what they do is more than use these signs to designate things. It is this *more* that renders them irreducible to the language (langue) and to speech. It is this 'more' that we must reveal and describe.' (1972:49).

Arguably this investigation of the 'more than speech' is still Foucault's project in THS insofar as he interrogates *genealogically* the various discourses on sexuality for the way they have created the objects of which they speak, be that the natural but dangerous childhood sexuality, homosexuality, hysterical female sexuality or normal responsible procreative sexuality, which in turn create the more general object 'sexuality'. Thus it is still the 'more than speech' that is Foucault's terrain, and that in THS he describes as the power/knowledge network that constitutes 'the deployment of sexuality'.

²² Foucault argued in The Order of Things (1973) that periods of history can be described in terms of the 'discursive regularities' and relations that unite sciences (1972:191). This was his 'celebrated but shortlived' (Dreyfus and Rabinow, 1986:18) notion of the 'episteme'.

In THS sexuality is relocated as a discursive effect, a space that has been mapped out by and is interwoven with relations of power and knowledge. This idea of space, a clearing, is one that Foucault used in The Archaeology of Knowledge where it was the discursive space governed by a system of rules (Dreyfus and Rabinow, 1986:109). In THS, as in Discipline and Punish before it, the clearing is the result and context of the practices that operate within it. The discourses of sexuality and their interrelated practices, the social manoeuvres, have created the object 'sexuality' and in doing so, have cleared a space for themselves.

Genealogy is an historical method, interrogating current discourses in search of their place within historical contingencies, but it is a method opposed to traditional history. It does not seek to record the progress and continuity of societies. It avoids the search for depth, avoids the search for what 'really happened' underneath historical events, but locates its analysis on the surface, on the details, it is 'meticulous and patiently documentary' (1971, Rabinow, 1984:76). The notion that there is a deep and true meaning of history is relocated as a function of the historical discourses that claim as much. Genealogy is opposed to the totalising effects of 'superhistories' such as Hegelian or Marxian histories that see one great plan unfolding as time progresses. Foucault wants to offer an analysis that illuminates specific aspects of present society, specific present discourses (and the non-discursive practices formed alongside and in connection with them) by tracing their history and that history's interconnections with strategies of power and knowledge in their peculiarity.

This approach to history is what Foucault terms a 'history of the present' (1975:31). It has an 'unabashed contemporary orientation' (Dreyfus and Rabinow, 1986:119), in the sense that it begins with a self-reflective diagnosis of the present. In THS, for example, Foucault points to the way we currently (in the 1970s at least) speak of sexuality. In particular, he considers the way that speaking about sex, confessing our sexual deeds and desires is considered a path to true and deep understanding of our selves. The historian of the present then considers where such a way of talking arose, how it has been changed, shaped through time by forces of power and knowledge, not in order to discover their origins, the moment at which one can argue it began, but to follow 'the complex course', to 'identify the accidents, the minute derivations or conversely, the complete reversals ... that gave birth to those things that continue to exist and have value for us.' (1971, NGH, Rabinow, 1984:81).

Foucault described himself as an 'empiricist' (Kritzman, 1988:106), that is, he wanted to provide the detailed evidence for his assertions. Thus, although Foucault's

position does seem to be that which he stated in 1967: 'There is nothing absolutely primary to interpret because, when all is said and done, underneath it all everything is already interpretation.' (quoted in Dreyfus and Rabinow, 1986:107), it is not the case that any reading of history will do. Foucault argues that, to stick with the example of *THS*, this *is*, in terms of the evidence available to him, how the current discourse on sexuality is historically linked to the confession. He claims to trace the confession and its links to power as they have really occurred. Foucault then locates this specific trace (of the confession) within the more general power strategy, the deployment of sexuality. Thus Foucault stated: 'I am fully aware that I have never written anything other than fictions ... I would not say that they were outside the truth. It seems plausible to me to make fictions work within truth.' (Morris and Patton, 1979:75; Gordon, 1980:193)

There has been opposition to a feminist/Foucauldian meeting that has focused on his arguments around discourse. Foucault's arguments have been grouped (perhaps hastily) with writers generally referred to as 'post-modern' (particularly with the work of Lyotard, 1984), and the general epistemological/methodological argument that there are only ever truths of the world, never a Truth to be discovered. The possible antithesis here concerns the relationship of his theoretical stance to feminist political practice. To break this down a little, the problem is that Foucault's work is seen to represent a challenge to feminist epistemology, that is, with feminist claims to truth, and consequently with feminist politics. There are therefore two related questions for feminism:

- i) Would the adoption of Foucault's ideas prevent feminists from making legitimate truth claims?
- ii) If so, what happens to political action?

Making Feminist Truth Claims

The problem Foucault's position holds for feminism has been interpreted as follows:

'[Feminism has been] based on the premise that *we as feminists can speak authentically, can speak the truth* of ourselves for all women by virtue of our supposed exclusion from male culture and as a result of our rejection of their meanings. The tendency to place women outside culture, to define femininity in terms of an absolute exclusion and consequent innocence with respect to language and ideology ... [assumes] that we can shed what is supposedly a false consciousness imposed and maintained from outside.' (Martin, 1988:15, emphasis added).

Read from within Foucault's framework, the claim that feminism has access to the Truth becomes problematic, for it amounts to the claim that feminists are unaffected by the various discourses which construct our perceptions of Truth. Hence the concern is that by refusing to privilege any one discourse (that is the feminist) above another, Foucault's analysis 'deprives [women] of the conceptual weapons with which they can understand and begin to overcome their universal subordination.' (Balbus, 1982:476).

Foucault's various comments on truth are somewhat confusing, especially where he makes broad and almost rhetorical generalisations about his own position. For example, where he argues that 'we are forced to produce the truth of power that our society demands, of which it has a need in order to function'(1980:93) or that 'each society has its own regime of truth, its general politics of truth: that is, the type of discourse which it accepts and makes function as true'(Gordon, 1980:131), it does seem that one is left without being able to claim any statement as true without it being always the result of the operations of a society-wide power. Foucault's arguments are the most persuasive when he is talking about particular discourses and with specific examples.

It was never Foucault's argument that truth doesn't exist, nor that everything is in people's minds, nor that if power and truth are connected, the truth propounded is automatically false. Foucault's works are better understood as investigations of 'problematizations', that he defined as 'the totality of discursive and non-discursive practices that introduces something into the play of truth and false and constitutes it as an object of thought (whether in the form of moral reflection, scientific knowledge, political analysis, etc.)'(1988:257). He wanted to 'question over and over again what is postulated as self evident, to disturb people's mental habits.'(1988:265).

Feminists have seen in this sort of approach the opportunity to critique various truths that are propounded about women and gender relations. The task of feminism becomes 'the deconstruction of truth and analysis of the power effects claims to truth entail.'(Smart, 1990:82). This mode of feminist analysis is one that follows Foucault in its disentangling of the power/knowledge relations that (in)form discourses and the non-discursive practices based upon them.

'The gaps, silences and ambiguities of discourses provide the possibility for resistance, for a questioning of the dominant discourse, its revision or mutation. Within these silences and gaps new discourses can be formulated that challenge the dominant discourse. This theory of discourse and their mutability provides an accurate understanding of the task of feminism.'(Hekman, 1990:189-90).

The problem this raises for feminism is where does feminist discourse come from? That is, feminists can criticise truth claims, but on what basis? How can feminists claim any authority for their statements?

Feminist claims are often said to derive from thinking about the political dimensions of women's lives 'as women' through meeting in groups to discuss common experiences: 'consciousness-raising'. However, feminists have questioned the validity of consciousness-raising as a method. One major criticism is that when some segment of the female population is not represented, claims to the experience of all women are unrepresentative, and consequently set up the experience of some women as the experience of all.²³

Although feminism has become aware of the differences between women (of age, race, able-bodiedness) and the exclusionary claims of some feminist work, this did not lead to an immediate epistemological change in feminism, such as a decision that to make truth claims was impossible. Rather, 'the chief imperative was to listen, to become aware of one's biases, prejudices' (Bordo, 1990a:138), so that there was still a search for true, correct feminist perspectives based on a more representative sample of women.

Yet experience has also been criticised as the basis on which to form feminist theory: 'experience must be the most unreliable source of theoretical production that we could possibly have chosen.' (Belsey, quoted in Gunew, 1990:27). Using experience as the basis of feminist claims implies that women are untouched by the various constructions of Woman (Gunew, 1990), and will be able to stand outside societal constructions that inform perceptions and see the Truth:

'the claim that women will produce an accurate description of reality, either because they are women or because they are more oppressed, appears to be highly implausible. Given the diversity and fallibility of all human knowers, there is no good reason to believe that women are any less prone to error, deception and distortion than men .. [This is] to fail to grasp the manifold ways in which all human experiences ... are mediated by theoretical suppositions embedded in language and culture.' (Hawkeshead, 1989:544).

Thus it seems that that whilst the critique of present truths advocated by both Smart (1990) and Hekman (1990) is an attractive strategy for feminists to adopt, there is a stumbling block here, one that concerns all attempts to speak the truth. This problem

²³ A second criticism is that there is a danger that the claims made will become claims to some essential womanhood that exists in all women, ignoring the *social* construction of that *perceived* difference from men (Gunew, 1990).

becomes especially clear where there is a move from critique to theory construction as there is in feminism. It is at that juncture that feminism is forced to question the ability to make truth claims *tout court*. There is no easy path out of this, but the path left open for feminists is certainly not to stop talking or to renounce any feminist claims.

Rather, there is a need to be self reflexive about feminist discourse's 'conditions of existence' (Gunew, 1990), the powerful consequences of feminist discourse, its terms and its conclusions: a continual questioning of feminism's 'mental habits'. That is, feminists can see their own claims not as the Truth, but, as Foucault's claims, 'fictions that work within the truth'. Feminists build pictures based on the 'material reality' of women's lives that act as both critique of previous perceptions and as new theoretical constructions, such that

'the nature of the relationship between feminism as critique and feminism as construct continues to be both a problem and an inspirational spur towards action.' (Gunew, 1990:23).

What About Politics?

Much of the unease about this position is centred around the practical, political implications of such a stance. Hekman sums up the critique thus:

'Foucault's critics take the position that his approach definitely precludes principled political action because the logic of his analysis denies the possibility of anything but a relative conception of truth.' (1990:175).

Foucault's position on truth and on freedom have been the topic of debate outside the immediate aim of developing feminist social theory (Taylor, 1986; Wapner, 1989). Taylor (1986) argues that although it is understandable that Foucault wants to distance himself from the 'banners of freedom and truth' because he is criticising the belief that we need to liberate our 'true selves', he cannot avoid these terms completely.

Although Foucault's work has been pulled into debates on relativism, his position is not an alignment with relativism but a thesis about the way that certain 'truths' can be the result and underpinning of power relations²⁴. Taylor's argument is that Foucault's 'unmasking' of the operations of power requires him to be able to speak about the *truth* of what is happening: he cannot avoid the term altogether. As stated above, Foucault saw himself as an 'empiricist', as he tried to give evidence for his assertions, but

²⁴ Thus Foucault's argument is not the classic relativist one that people's perceptions are always relative to their position in time and space (see Lukes and Hollis, 1982), but an argument about the relationship that can exist between power and the 'truths' that we accept and 'make function' as true.

he never declared that what he wrote was the Truth. Instead he preferred to think of his writings as 'fictions that work within the truth.' Thus Foucault would argue that he is putting a story around the evidence that 'truly' exists.

A second criticism of Taylor's is that Foucault cannot avoid the concept of liberation, even if he maintains that such a state is unachievable. Taylor argues that the concept of power requires the concept of liberation. Otherwise there would be nothing for power to be acting against (that is, what power constrains is our freedom) and no reason to oppose power (because there must be some good to which we are striving).

This is close to Habermas' (1986) worry when he argues that Foucault cannot answer the question 'why fight?' because from his account it seems we only ever move from one regime of power to the next without being able to argue that one is any better than the last: 'why is struggle preferable to submission? Why ought domination be resisted? Only with the introduction of normative notions of some kind could Foucault begin to answer such question.' (1986:284). Similarly, Fraser (1981) argues that although Foucault's work on the microtechniques of power is insightful he appears 'normatively confused' in the sense that although his tone is critical he leaves himself without a position which permits the condemnation of 'objectionable features of modernity'.

One might argue at this point that theoretical positions that do not straightforwardly imply political directives are not, as descriptions of the way things are, necessarily wrong. Moreover, that there is no ultimate Truth to be discovered need not lead to political paralysis. Foucault was never concerned about this 'problem' in his own political activities, and was clear that in political activity people use discourses that may be problematic simply because there are not alternatives (Gordon, 1980). Having said this, these criticisms of the implications of Foucault's position on truth for political action should be answered within a discussion of Foucault's possible antitheses with feminism because feminism has a clear practical orientation and often seeks political programs to achieve the aim of the alleviation of women's subordination.

Foucault never wanted his academic work to present a basis for political action. He avoided developing any political objectives, not because he wished to declare his work without political implications but because he did not see it as his role to shape others' political will (1988:265). The perspective that is asserted in many of the critiques of Foucault is one that assumes that one has to seek the Truth, which will by definition be outside (or 'below', repressed by) power, in order to know what to do about changing

present society. Moreover, that one has to have fundamental values that are presented as better than the present conditions in order to enter into political action.

Foucault's argument to this would be that political action can never and need not be based on a fundamental and unchanging Truth. From a Foucauldian perspective, people enter into political action in the name of a historically specific truth, an unstable truth that their actions (both discursive and non-discursive) uphold. Furthermore, as Hekman argues in defence of Foucault, 'the assumption that political action, to be valid, must be founded in absolute values is precisely the assumption that Foucault is challenging.' (1990:180). The values that political actions are based upon are for Foucault part of their discourse, not facts or Truths to be protected²⁵. This is not the same as arguing that they are false and should henceforth be abandoned. But Foucault wanted to point out the way that these discourses created their own truths and the way that they are interconnected with the operations of power. Thus Foucault's point is not that all discourses that present their analysis in terms of the Truth, eg. about how or where power operates in society, are wrong or false, but that first, they are not straightforwardly outside of and against power because very often they are themselves based on power networks. Secondly, even if political actions produce the desired result, there may also be ramifications that could not be foreseen. With regard to developing alternatives to present power situations he said

'My point is not that everything is bad, but everything is dangerous, which is not exactly the same as bad. If everything is dangerous, then we always have something to do. So my position leads not to apathy but to a hyper and pessimistic activism. I think that the ethico-political choice we have to make every day is to determine which is the main danger.' (Rabinow, 1984:343).

Perhaps problems and frustrations arise because Foucault's analyses are much more present orientated than the criticisms of his stance imply and demand. Foucault's strengths lie in his ability to pull apart the power and knowledge interconnections that have forged *present* truths, not in developing programs of action for the future. He is arguing not about any statement, but about those truths that *have* been generally accepted as true. As Hacking argued, Foucault studied the empirical conditions under which truths are formulated (Hacking, 1986), the 'totality of rules according to which the true is distinguished from the false and the concrete effects of power attached to what is true.' (1981:306). In order to interrogate present truths the critic does not *need* to appeal to

²⁵ This is the argument that Foucault had with 'rights talk' (1980).

a fundamental Truth that has been covered up, nor does she *need* a vision of what would improve on this truth, (even if 'politically' she may have one).

The continual questioning of truths then, is the only programmatic action to which Foucault's work clearly points. As discussed above, this questioning includes the questioning of one's own political discourse and the links with power that its knowledge base may entail²⁶. Foucault's politics therefore has its emphasis on local resistance and the questioning of discursive categories that surround one. Its motor is scepticism (Rajchman, 1985:7). His philosophy is neither merely descriptive nor prescriptive but 'it is occasion, spark, challenge. It is risk' (Rajchman, 1985:123). There is no great Foucauldian plan for political critique, but there is the suggestion throughout his writings and interviews that one should be continually questioning the taken for granted truths that structure daily lives. He saw his work as that of the 'specific intellectual' who is 'attentive to the present', who 'locates and marks the weak points, the openings, the lines of force, who is incessantly on the move, who does know exactly where he is heading nor what he will think tomorrow.' (Kritzman, 1988:124).

Foucault argued that systems of constraint will always exist. It is in the ability to *change* them that Foucault saw the possibility of political action (see Kritzman, 1988:294). Foucault does not posit a liberation that gets outside of power, but argues that power and freedom are not mutually exclusive. Power is analogous to a network, and the political problem is to not to work towards some abstract freedom outside this network but to *negotiate* our lives, our freedom, within power. This argument rests on the difference which Foucault, rather belatedly, drew between power and domination which clarifies his perspective on the relationship between power and freedom. Power is not the opposite of freedom.

'Power is exercised only over free subjects, and only insofar as they are free. By this we mean individual or collective subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse comportments may be realised ... Consequently there is no face to face confrontation of power and freedom which is mutually exclusive.' (1982:221).

Foucault explained his avoidance of the term liberation. It is the connections that the term has with humanist discourses that warns Foucault off:

²⁶ I use the term 'may' here because it is not the case that Foucault saw every form of knowledge and every knowledge claim as *necessarily* linked with power. He said that his claims were focused on the human sciences, for eg., not on the 'exact' sciences (Kritzman, 1988:106).

'I've always been a little distrustful of the general theme of liberation to the extent that ... there is the danger that it will refer back to the idea that there does exist a nature or a human foundation which, as a result of a certain number of historical social or economic processes, found itself concealed, alienated or imprisoned in and by some repressive mechanism... I do not mean to say that liberation does not exist. When a colonial people tries to free itself of its coloniser that is truly an act of liberation... But as we know this act of liberation is not sufficient to establish the practices of liberty that will be necessary for these people, this society and these individuals ... The analyses I have been trying to make have essentially to do with the relationships of power. I understand by that something other than the states of domination. [Domination is where] the relations of power instead of being variable and allowing different partners a strategy which alters them, find themselves firmly set and congealed.'(Bernauer and Rasmussen, 1988:3).

In Foucault's eyes, therefore, his analyses of power and the power effects of discourse, are already analyses of freedom. It therefore does not make sense to criticise him for failing to make space for freedom in his work.²⁷ For Foucault, power works 'within' freedom: freedom is not in the future or in the past but in the present.

Feminism is a movement of resistance par excellence in our society: a movement Foucault would term a 'reverse discourse'. Feminism can be understood as negotiating the freedom of women, making critiques of widely believed truths about women and making demands based on the feminist truths that presently seem correct and legitimate. Foucault's attack on claims to truth should not lead feminism into political paralysis: a Foucauldian feminism would be analysis that is determined in its critique at the same time as it acknowledges its ability to be proven wrong in its theoretical construction. As Hekman argues, it would be a 'critical ontology of ourselves'.

'The critical ontology of ourselves has to be considered not, certainly, as a theory, a doctrine, or even as a permanent body of knowledge that is accumulating; it has to be conceived as an attitude, an ethos, a philosophical life in which what we are is at one and the same time the historical analysis of the limits that are imposed upon us and an experiment in going beyond them.'(Foucault, 1984:50, quoted in Hekman, 1990:183).

²⁷ However, this later clarification on his position reveals that Taylor's point was in part valid where he argued that the notion of power is linked *conceptually* with the notion of imposition so that Foucault's notion of power conceptually requires the notion of (what Taylor calls) freedom even if this possibility is empirically impossible.

Conclusion

The purpose of this chapter has been to introduce the work of Foucault in some detail, and to investigate what appear to be the major 'stumbling blocks' for a feminist use of Foucault. In each of the three sections, I have attempted to be fair to Foucault's work, whilst keeping the emphasis on its implications for a feminist agenda. Through a discussion of the major antitheses, I hope to have reached a point at which the adoption of Foucault's ideas is not an unprincipled borrowing but is with careful thought to the wider projects involved.

In the next chapter, I turn to the specific topic of incest in order to investigate the directions hinted at in this chapter. How do Foucault's arguments on power, sexuality and discourse bear on feminist work on incest?

Chapter Three

Incest (I)

In the preceding chapter I considered the relationship between Foucault and feminism on a broad theoretical level. Taking that general discussion as its premise, this chapter focuses on the specific topic of incest. As discussed in Chapter One, until the past decade or so most sociological writings on incest posed questions around the origin and function of the incest prohibition. With the work and analyses of mainly feminist researchers, however, the sociology of incest has shifted to a consideration of the commission, the practice of incest. This feminist theorising has relocated the issue of incest within the feminist discourse of violence against women, making central questions of the social construction of (especially male hetero-) sexuality, questions of power in the family and questions of the way the widespread occurrence of incest is silenced. In this chapter I explore the feminist analyses of incest alongside Foucault's general arguments in THS.

These feminist analyses are of a different genre than most of the feminist theorists discussed in the last chapter. Rather than contributions to feminist theory or philosophy they have a more educative and overtly political aim which is to draw attention to the fact that incest does occur and that its form takes that of an incident of sexual abuse committed overwhelmingly by an adult male against a girlchild. These feminist texts are also ones which may seem least compatible with Foucault's arguments. In this chapter I argue that to read these analyses against Foucault's work is an interesting exercise because

i) it illuminates the subtleties of the feminist analyses on incest. These feminist analyses and the women survivors' accounts on which they draw are rich evidence of the sorts of arguments being made by many feminist philosophers and in Foucault's own writings. That is, in their different language these texts are just as interested at looking at the

complexities of, for example, the operations of 'disciplinary' power, power/knowledge networks and the discourses of sexuality and sexual abuse.¹

ii) Foucault's work provides concepts and avenues of analysis which it may be fruitful for feminist research on incest to explore.

The exercise can be thought of as using Foucault's work as a place to gather and reconsider the feminist analyses of incest. In many ways Foucault's work is merely placing a framework around what the feminist analyses are already doing. But there are also places where the exercise introduces concepts not previously explored in feminist work, and points to directions for future feminist research and analysis. That is, places where I point to the usefulness of Foucault for feminism discussed in Chapter Two.² There are also places where the inadequacies of Foucault's work for addressing this issue are highlighted. The chapter is an exploration and rethinking of feminist work on incest under headings that mirror Chapter Two. Thus I shall be concerned with questions of power and sexuality, and with questions around how incest is spoken about. The discussions are always 'led' by the feminist analyses, and not by Foucault's concerns.

For feminists it is in many ways a familiar story that emerges from the knowledge which has been built up in the past decade or so about the practice of incest. The speakouts by women survivors of incest revealed the widespread nature of what had been generally considered a rare crime (Armstrong, 1978; Droisen in Driver and Droisen, 1989; Ward, 1984). It was revealed as in the majority of cases a sexual assault (and very often the repeated sexual assault) of a female by a male³, and a hugely underreported crime of which even those who came into contact with the abuser were unaware. These abusive

¹ Which is not to deny that there are still points at which these analyses contrast with Foucault's arguments.

² It should be noted that Foucault has made comments around the issue of child sexual abuse that feminists would firmly reject. In THS he refers to an incident of (what feminists would regard as) child sexual abuse as an incidence of 'inconsequential bucolic pleasures' (1981:31). Furthermore, in a debate (in Kritzman, 1988) Foucault joins others in advocating the legalisation of adult-child sexual relations.

³ The sexual abuse of boys cannot be denied. There have been studies on the sexual abuse of boys (see eg. Bolton et al, 1989). Most sexual abuse of boys is carried out by men (see eg. Kelly et al, 1991). Although such conclusions are always tentative, it does seem that in comparison to girls a higher proportion of boys reporting sexual abuse have been abused by strangers rather than by family members (Finkelhor et al, 1990).

men were not psychologically abnormal in any way, nor did they come from any particular class or racial background (see eg. La Fontaine, 1990). There were, moreover, a large number of what feminists have termed myths concerning incest that seen in the light of this newly discovered feminist knowledge, grossly misrepresented what incest is about. These myths extended from 'common knowledge' to the psychological and medical knowledges on which professionals based their therapeutic practice in those few cases that reached that stage. Incest was a familiar story insofar as it was a repetition of what feminist knowledge had revealed about the crime of rape.

Making this connection with rape and sexual assaults more generally, feminist analyses of incest have relocated incest within the discourse of sexual violence. The various renamings of incest convey this relocation, for example, 'incestuous assault' (Butler, 1985), and 'Father-Daughter rape' (Ward, 1984)⁴. A conference on feminist professional practice, drawing on Kelly (1988b), agreed that child sexual abuse was 'on a continuum of male violence against women and children.' (MacLeod and Saraga, 1988:24)⁵. Rush has argued that

'we must begin to think of children's liberation as being the same as women's liberation. The female child and the woman are the same person merely at different stages of development.' (quoted in Nelson, 1987).

In the feminist analyses, it is not an incest taboo that tells us something about (the evolutionary stage or functioning of) our culture, as anthropologists and sociologists had suggested, but *the practice* of incest, the fact that it happens and the form that it takes, that tells us something of the culture in which we live.⁶ The questions that the recent feminist writers have asked around incest are consequently different from those of previous academic writers. As discussed in Chapter One, anthropologists and sociologists

⁴ Where feminists have kept the label 'incest', they have sought to change the images associated with it, eg. Nelson 1987, and Armstrong, 1978 who says: 'sexual relations between related consenting adults can go find itself another word to live under' (1978:8).

⁵ Incidentally, the argument that incest should be seen in relation to other sexual offences is an argument that has also been made in mainstream sociological work. In a discussion of principally anthropological arguments, Goody has argued that incest should be analysed within the context of 'the total constellation of sexual offences within that society' (1971:81).

⁶ Argument adapted from Arens 1987.

(such as Durkheim, 1898; Parsons, 1954; Levi Strauss, 1969) were interested in their various ways in the operations of the incest prohibition as a functional, even foundational, rule in society . On the other hand, the feminist questions are ones of the operations of power, especially in the household, of the construction of sexuality, especially male heterosexuality, and of the myths that are repeated around incest. It is these questions that I shall explore in relation to Foucault's arguments, beginning with the questions that arise around power.

Power

It is a fundamental feminist argument that incest is about power.⁷ However, this stark statement conceals the different levels or senses in which feminists regard incest as about power. In this section I argue that the feminist arguments on how power is relevant to incest can be clarified by distinguishing these different levels, and that Foucault's writings and commentaries on the operations of power as discussed in the Chapter Two are of some use to thinking through the different levels of power in the feminist analyses. His work can also be used to highlight and extend aspects of power in the feminist accounts.

Why is incest about power for feminists? This argument is in large part a response to the treatment of incest as the expression of mutual sexual desire. The evidence of women survivors shows that in fact incest has much more to do with power relations. In this section I use Foucault's terminology and divisions in order to spell out how the feminist analyses see incest as about power.

As a reflection back on Foucault's arguments around power, this section illustrates the way in which the techniques of power that Foucault describes at work in the maintenance of social order (especially clear in Discipline and Punish(1979)) are also at work in incestuous abuse, a practice which in some senses militates against order by disrupting the central social institution of the family (although feminist analyses also reveal how it is related to the maintenance of a traditional, gendered social order).

⁷ Parton states that 'child sexual abuse has its roots in male power and a male dominated sexuality'(1990:55).

A Note on Violence

Is incest about violence? The physical injuries that can result leave no room for doubt that incest can be seriously damaging, especially where it includes rape, which with babies and young children can be fatal (Rush, 1974, 1980a; Driver, 1989:182; Ward, 1984:141). Driver lists some of the injuries that can follow child sexual abuse: lacerations, bleeding, bruises, grasp or bite marks; urinary tract infection, discharge, or venereal disease; the child may suffer anal dilatation or dropped bowel, pained urinating, vomiting, stomach ache, abdominal cramps. Then there are the psychosomatic symptoms of incontinence, eczema, asthma, allergies, nausea, fainting, and fits resembling epilepsy (1989:182).

Within feminist theory the term 'violence' has been extended to include behaviours not covered by the common sense notion of violence. It has been applied to exhibitionism (MacNeill, 1987), psychosurgery (Hudson, 1987) and practices which diminish women's chances of entering academia (Ramazanoglu, 1987). The rationale behind such a move is first, to place at the forefront of analysis the women's experiences of these behaviours. However trivial exhibitionism may be depicted, for example, the women to whom it happens feel violated. Furthermore, the incidents constrain their behaviour both at the time and in the future, as women limit their movements (MacNeill, 1987).⁸ Secondly, the 'extension' of the term violence is made in order to draw attention to the sheer volume of behaviours by men to women that constrain women's lives, ie. that are oppressive to women. In light of this feminist work, it has been proposed that there is evidence of what has been called a 'continuum of violence' (Kelly, 1988b).

Feminists have been criticised for extending the label 'violence' to cover too many practices (Liddle, 1989:766). Liddle argues that some behaviours are called violent by feminists because they are oppressive to women. He maintains that the distinction between violence and oppressive behaviours should not be collapsed, for that collapse 'transforms 'violence' into a residual category into which anything pernicious or degrading might be thrown'(Liddle, 1989:766). I agree that although the label 'violence against

⁸ The fear of violence also means that women are constrained before any incidents against themselves (Hanmer and Saunders, 1983). A recent survey carried out by Women's Own magazine found that 75% of the women asked were fearful of rape or assault when out alone (reported in The Guardian, 13.5.1991).

women' is useful for the reasons given in the above paragraph, the term violence can become overloaded in feminist analyses.

Incestuous abuse *can* also be an extremely violent act in the sense that it may involve the imposition of physical force, and result in the physical injuries listed above. However, I wish to maintain a distinction between violence and power⁹. My argument differs from Liddle's in that I do not want to argue that the term violence is too wide (it covers too many things), but to argue that by placing incest under the rubric 'violence against women'¹⁰, feminists do not do justice to their own analyses. The feminist analyses and the data on which they are based reveal aspects of the operations of power that the term 'violence' does not convey.¹¹

Feminist analyses of child sexual, including incestuous, abuse report that 'most child sexual abuse is not violent'(La Fontaine, 1990), 'force was rarely used as it was not necessary' (Herman, 1981:83). As Driver says, 'the practised incest offender usually aims to leave no marks.'(1989:182). Feminist work can be used to back up Foucault's statement that power's 'success is proportional to its ability to hide its own mechanisms'(1981:86). Violence is at the boundary of power. Often the full blown use of force in incestuous abuse is not required because the abuser has other tactics at his disposal. *Threats* of violence toward the girl herself or another can form a part of these tactics (see Ward, 1984:142 and La Fontaine, 1990:78 where a father threatens to kill the girl's mother if she tells any one what has been happening). Here I agree with Liddle (1989:766) that threats of violence cannot be simply equated with violence: they are rather about command and authority (see below). Other tactics used are: telling her that it's an education for later life, that it's normal, that he loves her, she's special, promising and giving gifts, using her confusion

⁹ Hearn (1990) simultaneously runs together and keeps separate violence and power where he refers to the 'empowered caress' of sexual abuse as 'itself violence', arguing that caress can be just as violent as more overt force, as it is manipulative, an unwanted intrusion, a sign of *power*. (1990:72). I am not disagreeing with the sentiment of this argument, but with the analytic use of the terms violence and power.

¹⁰ Kelly (1988b) has argued that there should remain a category incest within the continuum because there is some specificity about being abused within the household.

¹¹ These subtleties of the feminist analysis can also be used to form a feminist critique of relevant mainstream sociological writings eg. about the family and the incest prohibition. This would be lost if feminists lose the category incest within that of violence against women.

to make her feel like the one at fault (Ward, 1984:149, Herman, 1981:85). Thus, the feminist analyses do not in fact present incest as simply violence. There is much more going on than this term would suggest. Power is at work here in Foucault's sense of 'actions upon actions'. That is, the one who is constrained (the abused) is maintained as an acting individual. The operation of power does not stop people acting (there are no chains or locked cells), but acts instead upon their actions (in Dreyfus and Rabinow, 1982).

I also maintain a distinction between violence and *violation*. In making a distinction between violence and power, and considering the operations of power, I do not wish to suggest that incestuous abuse is no longer a violation. Within feminist work, several of the acts which have been reinterpreted and encompassed within the term violence are acts which concern an invasion of a sense of personal space, boundaries and personal autonomy. This is what I term violation. There can be no doubt that from a feminist perspective, most cases of incest are about violation in this sense, that is, even when the physical injuries listed above do not occur, women feel violated. Several of the operations of power that I discuss are violations, although they do not involve overtly violent behaviour.

In the following, I divide the feminist analyses of power into types of power taken from Foucault's work. These terms provide a framework within which to organise the arguments of the feminist analyses of incestuous assault. It is my argument that this exercise illustrates the way in which the feminist work already contains the material *and*, although perhaps to a lesser extent, the arguments around power discussed in the previous chapter. The first form of power is the juridico-discursive power that Foucault argued was gradually being replaced by the operations of bio-power. I argue that the feminist analyses use this model of power in their analyses and that they are justified in doing so. It is then argued that there are also more disciplinary modes of power in the feminist analyses of incestuous assault. Finally, it is argued that the feminist analyses are not complete without the perspective of who to whom, a group level analysis which can be seen to correspond to Foucault's notion of domination.

Juridico-Discursive Power in Feminist Analyses of Incestuous Abuse

'he demanded respect. His word was law. Our mother could shout at us to get up, go to bed, eat, clear up, etc. and maybe take a swipe at us. But the

worst she could do was to say 'I'll tell your father'. He had to be obeyed.'(an incest survivor, in Droisen, 1989:73).

It will be recalled that juridico-discursive power is the term Foucault gives to what he sees as the implicit model of power within most political theory. He argues that political theory continually rehearses such an understanding of power despite the fact that on the whole power no longer operates in this way. In this section I shall argue that there are aspects of the feminist analyses of incest that are clearly described in terms of a juridico-discursive understanding of the power involved. These are primarily identified through the key concepts of authority and obedience. I shall also contend that this use of the juridico-discursive model of power is justified due to the nature of incestuous assault.

The argument of this section is that the Father¹² in the household or the abusing relative exercises power in the way that Foucault describes the sovereign's exercise of power. It will be recalled from Chapter Two that Foucault's concept of juridico-discursive power pictures power as a prohibitive force. I am not arguing that juridico-discursive power is at work in its prohibitive capacity. It is instead the capacity to command and to receive obedience that are relevant here.

Applied to incest, this mode of power is possible due to the position that the abuser so often has over the child. His position gives him authority: children are expected to obey. This authority, furthermore, is not unusual, but the socially accepted authority that an adult and especially the Father has within a household. Some feminists have suggested that where incest occurs paternal dominance is often exaggerated. Herman and Hirschman argue that 'these fathers ... tend toward *abuses of authority* of every conceivable kind, and they not infrequently endeavour to secure their dominant position by socially isolating the family from the outside world'(1977:41, emphasis added). Nelson reports that incest is most likely to occur where traditional roles are extreme and family members are seen as the man's property (1987:6).

¹² Where the capitalised form Father is used, I am, following Ward, referring not to biological fathers but to the *role* of an adult who would generally be expected to be caring and responsible toward the child. This may be the father, or a step-father, but the term is also used to include other relations and non-relations who are not strangers. Having said this, some of the arguments of this section apply with greater weight to a situation whereby the abuser lives in the same household as the abused.

Thus the Father exercising his power of authority is an image conveyed in feminist research and analyses of incest. Ward argues '[in] the incestuous family we find the most powerless of females, a girl-child, has become the sexual possession of the Father, the king in his castle lording it over his concubine.'(1984:193). Ward quotes researchers who have described the Fathers as 'tyrants, as exercising paternal dominance, as needing to appear the strong patriarch'(1984:194). Butler too suggests that the aggressors saw their homes as their castles, just as Western culture informs them they are, where they are the unchallenged rulers (1985:73). Within the family dominated by the Father, Daughters are 'young, dependent and constantly accessible.'(Ward, 1984:151). Echoing this argument, Dominelli states that incest is 'practised by individual men who wield tremendous authority over the individual girl.'(Dominelli, 1986:9).

The Incest Survivors Campaign has argued that 'the central issue is the exploitation of children's trust and obedience by irresponsible adults. Incest is the abuse of power.'(quoted in Nelson, 1987:7). Nelson also quotes Rich Snowden, a leader of men's counselling groups in San Francisco, who states '[t]hese fathers acknowledge that they could do what they did only because they could make their children obey and could command silence.'(1987:88).

Feminist accounts stress that the households in which incest occur do not differ greatly from other households. 'Normal' family structure is seen as contributing to the problem in feminist analysis of incest, in line with wider feminist critiques of the family (such as Barrett and MacIntosh, 1982). Herman argues that the root of the incest problem is the male headed household where 'the man expects to have his will obeyed as head of household, and expects his family to provide him with domestic and sexual services.' (Herman and Hirschman, quoted in Nelson, 1987:84). Moreover, that children, especially young children, are taught to display unquestioning obedience of adults, especially of their parents, and to trust their parents more than other adults, serves to make child sexual abuse easier, to confuse the child and to deter her reporting the incident to any one (Ward, 1984:143, 149). The power of the Father is the power of 'seizure', that Foucault identifies with juridico-discursive power.

'The sovereign exercised his right to life only by exercising his right to kill, or by refraining from killing ... Power in this instance was essentially a right of seizure: of things, time, bodies, and ultimately life itself.'(1981:136).

In this section, therefore, I have have illustrated how the feminist analyses of incest depict the power of the Father as in many ways similar to the power of the sovereign: a juridico-discursive power based on command and obedience. That Father's have a certain amount of this accepted power in the Family means that their sexual abuse of children is not so much a deviation from normal familial relations, but an illustration of them. Incest is an abusive way to exercise a familial power that is socially acceptable. This is what^{the} feminist argument that 'incest is the abuse of power/authority' conveys. It would seem that in terms of the survivors accounts, this model of power is appropriate. Moreover, as we shall see in Chapter Four, it is exactly in his discussion of incest that Foucault retains the model of juridico-discursive power in his own theorising, albeit in a different way from the feminist analyses. However, the feminist analyses also describe power's operations in ways that are more on a par with Foucault's concept of disciplinary power. The next section considers how the feminist analyses illustrate the operations of a 'disciplinary' power in the practice of incest.

Disciplinary Power in Feminist Analyses of Incestuous Abuse

'The family-as-haven is an ideological construct that obscures the fact that for the Daughters (at least) the family is a prison'(Ward, 1984:87).

'Is it surprising that prisons resemble factories, schools, barracks, hospitals, which all resemble prisons?'(Foucault, 1979:228).

The family is not explicitly considered as a disciplinary institution in Discipline and Punish. However, Foucault muses in parentheses on the family's employment of disciplinary techniques:

"Discipline' may be identified neither with an institution nor with an apparatus; it is a type of power, a modality for its exercise, compromising a whole set of techniques, procedures, levels of application, targets; ... And it may be taken over either by 'specialized' institutions ... or by institutions that use it as an essential instrument for a particular end ... or by pre-existing authorities that find it a means of reinforcing or reorganising their internal mechanisms of power (*one day we shall show how intra-familial relations, essentially in the parents-children cell, have become 'disciplined', absorbing since the classical age external schemata, first educational and then military, then medical, psychiatric, psychological ...*')(1979:215-6, emphasis added).

The purpose of this section is not to propose any historically causal argument about the family's use or 'absorption' of disciplinary techniques. Nor is it being argued that the

family is one of the discipline institutions, a 'discipline blockade' (1979:209). Rather, the argument is that the family as it has been presented in the feminist analyses of incestuous assault can be seen as disciplinary in Foucault's sense. The power relations that 'emprison' the one who is being abused are not simply described as juridico-discursive power, the rule of the Father (the sovereign) over the powerless and therefore obedient child. The subtleties of power's operations that are present in the feminist analyses are of the order described by Foucault as disciplinary. I shall argue this by presenting the feminist analyses in light of the three basic instruments of discipline: hierarchical surveillance, normalising judgement and the examination (1979:170-94).

1. Hierarchical surveillance. Discipline is a mode of power that works through observation. Those upon whom discipline is applied are rendered visible. The trap of visibility is described by Foucault through a discussion of the Panoptican (see Chapter Two). For the inmate in the Panoptican, power is both visible and unverifiable. It is visible due to the constant presence of the observation tower, yet it is unverifiable because s/he can never know when s/he is being observed. The inmate is totally seen without ever seeing, whereas the observer is able to see everything without ever being seen.

In the feminist accounts of incestuous abuse, surveillance recurs as a theme, or arguably as a mechanism by which the bodies of the Daughters are caught within a power network. Sometimes this is literally the abusive Father watching without himself being in view, what Ward calls 'visual raping' (1984:82). There are examples of fathers and brothers watching through holes in walls, of girls being watched dressing and undressing (Ward, 1984:22, 55, 82). The spaces within the home that were once thought of by the Daughters as private (such as bathrooms or bedrooms) were now spaces in which they could be watched so that they had now to be constantly alert, just as the inmates of the Panoptican.

This is surveillance at its most obvious, in the form of voyeurism. ^{But} The Father does not need to be hidden in order to have the disciplinary effect. The Daughter can still be viewed without being able either to reciprocate the gaze or to protest for reasons other than physical obstruction. For example, through fear of punishment, by not having the language or knowledge through which to articulate protest or by not having the strength to reject this precarious and ambiguous attention from some one who may otherwise be an inattentive figure in their lives. On this last point, women have spoken of the continual

forgiveness of and disappointment by their abusers (Armstrong, 1978), the precarious satisfaction that came from being special to someone when they were special to no one else (Herman and Hirschman, 1977:747). As the observed in the Panopticon, these survivors can never know the motivation behind the gaze. The 'seductive fathers' of whom Herman writes created great unease for their Daughters, who were unsure whether his attentions were motivated by affection or sexual intent (1981:109-25).

The feminist analyses of incest have shown how the abused child often employs those tactics that are available to her to resist the abuse. She may run away, avoid being at home alone with him, tell someone (Kelly, 1988b; Gordon, 1988). One method of resisting was to feign sleep, as if being unable to see the Father ('s gaze) would mean he would turn it elsewhere. The power of discipline requires that the individual be aware that s/he is being watched, ensured in the Panopticon by the observation tower constantly before the inmate's eyes. This visibility of power should not be forgotten in emphasising the visibility of the observed. Kelly reports that despite the resistance of one incest survivor she spoke to, 'it did not stop her step-father masturbating in the sitting room in the knowledge that she would see him.'(1988b:173). Knowing that she could not avoid seeing him was a form of power exercised by the abuser. The girl does not have to be the one observed in order to be the one abused.

Discipline works through the operations of a surveillance which is unverifiable. Because they can never be sure *when* they are the target of the gaze, the inmates behave *as if* they were always being watched. The unpredictability of further abuse recurs in survivor's accounts. This 'never knowing' placed the Daughters concerned in a constant state of anxiety. One woman says,

'there was always a fear of it happening ... the incidents become blurred because the fear of it happening became the overriding thing.'(in Ward, 1984:50).

Another asks

'can you imagine the terror of never knowing, when I would be sitting at the table doing my homework, coming home from school or getting ready for church, when my father would tap me on the shoulder and I'd turn around to find him grinning nervously, his face all red, standing behind me with an erection? ... I still have nightmares that my father is going to touch me and I'll turn around and see him like that.'(in Butler, 1985:66-7).

The effect of his gaze, therefore, is to make the young woman watch over herself - Foucault's 'automatic functioning of power'. Even when the abuser is no longer alive, the gaze may still be felt:

'I felt as if he was behind me and I felt as though I was going to get banged in the neck for telling someone - and he'd been dead six years.' (Kelly, 1988b:125).

Thus far the mechanism of surveillance can be seen to make the Daughters watch over themselves, to take precautions to avoid being caught by his gaze and the abuse that may follow. There is also another aspect of disciplinary power that is important in the feminist analyses. This is the fact of isolation for the sexually assaulted child. Like the individual within the Panopticon, she can see the tower before her, and is aware of his gaze falling upon her, but she is unable to see 'sideways', to those who share a comparable position, either within the household or outside it. 'I thought I was the only one and they would think I was really weird.' (Droisen, 1989:81). The realisation can be a source of further sadness and guilt. One woman says

'I thought I was protecting my younger sister from him. It wasn't until we were adults that I plucked up the courage to say to her, 'Did Dad do anything to you as well?' When she said 'Yes', I said, 'Oh God I thought I was protecting you.' I felt so guilty.' (Droisen, 1989:77).

For another the realisation that she was not alone was a source of relief:

'It wasn't until I was in my forties that I read an article about other women who had been through similar experiences. It was incredible to learn that I was not the only one. I was so relieved.' (Droisen, 1989:75).

2. Normalising Judgement. Foucault argues that disciplinary power operates through 'normalising judgement' (1979:177-84). By this he means that punishment does not require a breach of a rule so much as a stepping outside 'acceptable behaviour' as judged by the institution. The contrast therefore is between on the one hand, a rule in the form of 'thou shalt not' to which behaviour is referred and according to which one is either in line or in contradiction, and on the other hand, a guideline presented as the ideal to which one should strive. Thus the performance of a group of children within a disciplinary school will be compared against each other and against the projected performance to which it is deemed they should be conforming. The measurement of gaps from the norm and between

each other results in hierarchies and punishments,^{which,} although incorporating physical punishments of the judicial model, will be essentially corrective (1979:177-80). Conformity to the norm is desired and non-conformities are marked and punished with a view to correcting the deviation.

The effect of this mode of power is to impose an homogeneity since every one is pushed toward the same behaviour but at the same time it has an individualising effect because it measures individual's gaps from the norm. Normalising judgement therefore, consists of 'perpetual penalty ... it traverses all points and supervises every instant in the disciplinary institutions, compares, differentiates, hierarchises, homogenises, excludes. In short, it normalises.'(1979:183).

In some of the feminist analyses there is also a concept of normalisation where a subservient femininity is the norm. Rush argues that incestuous assault prepares the girl-child for conventional femininity, a life of accepting subordination to the males around her.

'The sexual abuse of children is an early manifestation of male power and oppression of the female ... (it is) an unspoken but prominent factor in the socialising and preparing of the female to accept a subordinate role ... [it] prepares her to submit later to the sexual abuse heaped on her by her boyfriend, lover and husband.'(1980b).

With the same sentiment, Jeffreys (1982) argues that child sexual abuse is a premature encounter of what girls will expect in adulthood. Responding to Kempe and Kempe's (1978) suggestion that incestuous assault may be overcome in girls but it is ruinous for boys, Jeffreys argues 'the seriousness of childhood sexual experiences is assessed according to whether it reinforces or undermines the *training* of children into the normal system of power relations under male supremacy.'(1982:64, emphasis added). Herman also argues that in the group of women she spoke to, the daughters learnt not how to please themselves, but how to please a man: 'In short, they were well prepared for conventional femininity.'(1981:118). Moreover, she suggests that 'incest represents a common pattern of traditional female socialisation carried to a pathological extreme.'(1981:125). The norm that is set up therefore is the subordinate, feminine, self-effacing woman.

Echoing this perspective, Ward argues

3: Incest (I)

'most Daughters are being prepared, overtly or covertly, for stereotypical femininity - which is based on dislike of women and aggrandisement of men. The patriarchal family constructs Daughters who are ready, willing, and able to co-operate in male supremacist society. Father-Daughter rape is merely a phenomenon at one end of the spectrum by which this construction is achieved.'(1984:196-7).

Thus the feminist analyses of incest see incestuous abuse as an extreme form of the training that all girl-children receive. The normalising aim of such training is feminine, subordinate girls and women. This femininity may be considered similar to Foucault's concept of 'docile bodies', a pattern of behaviour that is not docile in the sense of being lazy, but to the extent that the body, whilst seemingly in control of its actions, acts in accordance with disciplinary power. The docile body is a useful body, forming part of the larger machinery. The 'larger machinery' may be 'normal' family structure, the construction of compulsory heterosexuality, or that which Jeffreys and Ward name 'male supremacy'. This argument relates back to the gender/sexuality debate discussed in Chapter Two. The position that the feminist analyses seem to suggest is that 'gender socialisation', or the deployment of gender, entails the lesson that the feminine body as Bartky (1988) suggested, is not one's own (see Chapter Two and below).

3. The Examination.

'we were incest objects'(Armstrong, 1978:233).

In the examination, Foucault argues, the techniques of hierarchical observation and normalising judgement are combined. In the examination

'are combined the ceremony of power and the form of the experiment, the deployment of force and the establishment of truth. At the heart of the procedures of discipline, it manifests the subjection of those who are perceived as objects and the objectification of those who are subjected.'(1979:184-5).

Incestuous abuse as an 'examination' in this sense might be a description of feminist analyses. Incestuous abuse is certainly a 'ceremony of power', on the different levels being discussed here. The disciplinary power of the Father's gaze but also his juridical power as sovereign are combined as the Daughter becomes the 'surface' of the Father's 'experiment'. It is she who is perceived as an object and whose objectification is revealed by her

subjection to the abuse. The examination is the 'ceremony of this objectification'(1979:187), and a process of 'grading' her against some norm of femininity (as discussed above).

The ceremony of disciplinary power had the form of the parade, the review, in which 'the subjects were presented as objects to the observation of a power that was manifested only by its gaze.'(1979:188). It is the objectification so apparent in sexual abuse (in its many forms) that makes the notion of the objectification of female bodies so important to feminist analyses. The objectification is also a part of the process of subjectification in feminist analyses. The feminist position could be summarised thus: *the subjectification process involved in incestuous abuse is one by which children are subjected to abuse, treated as objects such that they are subjectified as feminine*¹³. 'Feminine' here refers to Bartky's (1988) feminine: the relationship to one's body which regards the body as not one's own, as submissive to the dictates of others, as 'docile'. Thus incestuous abuse is a particularly graphic example of the ways in which actions toward the body can shape it and its movements. It also highlights the interconnections between sexual abuse, the 'deployment' of gender, and sexuality. These issues will be further discussed below in the 'sexuality' section.

The notion of the abuser as sovereign is helpfully brought back in to this discussion of discipline in the sense that incestuous abuse combines both of the two forms of ceremony that Foucault associates with two different modes of power. In contrast to the disciplinary parade, the political ceremony of sovereign power was related to triumph:

'it was a spectacular expression of potency, an 'expenditure', exaggerated and coded, in which power renewed its vigour. It was always more or less related to triumph. The solemn appearance of the sovereign brought with it something of the consecration, the coronation, the return from victory.'(1979:187-8).

In incestuous abuse, the abuser appears as sovereign in the mode of judicial power and restates his position as the powerful one. The sexual abuse, moreover, may appear to the abused child as a triumph, that is, his triumph over her will. This is illustrated by Ward's argument that Father-daughter incest is experienced as rape, and rape is 'the

¹³ This argument may apply to male children as much as girl children, although the argument is insufficiently developed in feminist work to attribute this argument to any individual analyses.

experience of powerlessness, of being conquered. The conquered territory is our own bodies.'(1984:118).

The incorporation of the tenets of disciplinary power into the analysis of power in incestuous abuse emphasises that in a feminist analysis, abuse produces more than the immediate moment of subordination: it has effects beyond the violence and the violation. With violence, the Daughter's body may carry the mark of power in the most physical of senses. With the violation, the effects of incest can be extremely damaging in terms of psychological well being. All of the feminist analyses agree on these two arguments. But the sociological argument that emerges from the feminist analyses is that the Daughter is *subjected to* and *subjectified through* the abuse in ways that continually attempt to place her within prevailing familial and gender relations.

Domination

One of the most important arguments of the feminist analyses is that incestuous abuse is a crime committed overwhelmingly by men against women. It is this 'perpetual asymmetry' that feminist analyses highlight and that may seem to drop out of the analyses as one, following Foucault, begins to concentrate upon the 'how' of power as opposed to the 'who to whom?'

As discussed in Chapter Two, Foucault does concede in a late interview that the 'strategic games' of power should be differentiated from 'states of domination' (Bernauer and Rasmussen, 1988:19)¹⁴. This idea of power as domination is also the one which most feminist analyses of sexual abuse have most explicitly utilised. The state of domination has a place in feminist analyses of incestuous abuse. The glaring asymmetry of the statistical evidence, such that it is, would seem to reveal a clear case of 'domination' of male over female and adult over child. Waldby et al call this 'structural power':

'This form of power is hierarchical, static, public, socially legitimated (it has 'authority'); it is a form of control: the 'power over' model, with all its connotations of competition, dominance, and force.'(1989:102).

¹⁴ By labelling states of domination Foucault seems to be writing back in exactly that form of power he had denied, but as explained in Chapter Two, it is the distinction between structural power being always already there and it being built up through the tactics of power that he falls back on in this interview (1988:19), and see below.

However, I suggested in the discussions of Foucault and feminism in the previous chapter that domination is best understood not as a backdrop behind the operations of power but as built up through them. The distinction between these modes of conceptualising domination in respect to incestuous abuse is that in the first, the abuse is *understood within the context of* that state of domination, in such a way that domination is not *explained* but theoretically presumed (Adams, 1990). It is rather the explanation of power relations, ie. a focus on the tactics by which the perpetual asymmetry of power is upheld that is being suggested here.

Brownmiller's (1975) early work on rape was in some respects a good example of this. Her argument could be restated as follows: the state of domination between men and women is produced (at least in part) by the fear that women are made to feel of being raped. The tactics of power work to mark women out as potential targets of rape, such that their avoidance of rape is a limitation to them. Thus it is not just the fact that rape does occur that subordinates women, but that the various tactics (and these can be found in the various ways in which women are cautioned) produce what Brownmiller might then name a state of domination.

The two modes of power - the authority of the father figure (close to juridico-discursive power) and the disciplinary tactics - make incestuous abuse possible and, together with the operations of power in other areas, build up the state of domination that exists between the groups male/female and adult/child (and especially parent/child). Thus although I would agree with Waldby et al (quoted above) that there is a need to theorise what they term the structural level and I term domination, domination is not, as they characterise it, a static power, but is an asymmetry built upon the constant practice of power. Nor is it to be analytically collapsed into authority, for whilst authority and domination are linked in child sexual abuse and especially in incestuous abuse, authority is not always the sign of domination.¹⁵

¹⁵ For example, some women may have authority in the home, women teachers within a class, but this does not link them with a dominating group of people in a state of domination.

Sexuality

'In arguing that the offender is motivated by aggression, it is implied that he is not really interested in sexual gratification as such. The idea then develops that his behaviour is not *sexually* oriented at all. This allows us to avoid looking at any connections between male aggression and male sexual pleasure, and to avoid the uncomfortable thought that male sexuality in general may be implicated in the act.'(Driver, 1989:13).

Where does sexuality fit into the feminist analyses of incest? The concentration on the argument that incest is about power not sex was mainly a consequence of taking up the feminist model of rape as the one on which to situate incest. Within early analyses of rape it had been argued that rape was about power in terms of its motivation where rape was theorised as a man wanting to assert power to feel dominant (Russell, 1975), and in terms of the power relations between men and women that it simultaneously demonstrated and continued (Brownmiller, 1975). The influence of these two senses in which rape can be theorised as about power is apparent in the analyses of incestuous assault. Herman, for example, argues that 'power and dominance rather than sexual pleasure may be the primary motivation [in incestuous abuse]'(1981:87). Waldby et al argue that by 'linking the phenomenon of incest with the nature of the family and male-female relationships in patriarchal society' feminists have analysed incest according to a 'power theory'(1989:101). However, there has been a certain muddying of the 'power not sex' slogan in feminist theorising of rape, and the question of sexuality has been brought (back) into the question of sexual assaults notably with the work of MacKinnon (Edwards, 1987).¹⁶ MacKinnon (1982; 1987; 1989) argues that the construction of sexuality has to be central to the analysis of rape. Heterosexuality is the context in which MacKinnon situates rape, and masculine heterosexuality is interrogated for the ways in which its construction in a sense makes rape unsurprising:

'[the] male sexual role ... centres on aggressive intrusion on those with less power. Such acts of dominance are experienced as sexually arousing, as sex itself.'(1989:127).

¹⁶ I discuss the question of power, violence and sex in rape in my article (Bell, 1991).

Similarly, within the feminist analyses of incestuous assault sexuality has become central, as the quotation from Driver above suggests, because of the ways in which incestuous abuse is theorised as tied up with 'normal' masculine sexuality.

'The offender is not out of the ordinary ... he came from among us and is a mirror of our culture'(Sanford, quoted in Rush, 1980a).

'These Fathers are not aberrant males: they are acting within the mainstream of masculine sexual behaviour which sees women as sexual commodities and believes men have a right to use/abuse these commodities how and whenever they can.'(Ward, 1984:194-5).

In their analyses of the construction of masculine sexuality, feminists highlight the unsurprising nature of incestuous abuse. Armstrong argued that incestuous fathers are 'victims of their own sexuality' (1978:233). What is it about the construction of normal masculine sexuality ^{that} makes it a 'positive contributor to incest' (Nelson, 1987:83)?

In the feminist analyses it is argued that masculine sexuality is constructed as an aggressive force, easily tempted and, once roused, needing to be expressed. Masculine sexuality (and especially heterosexuality) is regarded as (in)formed through these cultural representations of it. The argument is that men are taught to seek dominance through sexual contact (as in Russell's argument) and to find dominance sexually stimulating (as in MacKinnon's argument).

'Masculine sexual behaviour, as a social construct and too often, as everyday practice, is devoid of tenderness, vulnerability and the fluid mutuality which flows from shared tenderness and vulnerability. Masculine sexuality is inculcated in men and women alike as being concerned with conquering: 'getting a woman'.'(Ward, 1984:200).

'The association of masculinity with domination, of sexual dominance with personal 'success' is all pervasive ... Generally boys and men learn to experience their sexuality as an overwhelming and uncontrollable force; they learn to focus their feelings on submissive objects, and they learn the assertion of their sexual desires and the expectation of having them serviced.'(MacLeod and Saraga, 1988:41).

In this section I rewrite the arguments around sexuality found in the feminist analyses of incest within a framework indebted to Foucault. Much of the ground work for such a framework has already been laid out in the work of De Lauretis (1987) and Hollway

(1984; 1989), which, as discussed in Chapter Two, extended and elaborated his arguments within their theorising of the construction of gender and sexuality¹⁷.

Foucault's arguments on the construction of subjectivity are mostly implicit in THS. His argument that sexuality is *deployed* sets up the basic framework for his arguments about subjectivity. In THS sexuality is 'imbedded in bodies' by the operations of power/knowledge networks, at work with particular intensity around the family. It is constructed as a deep truth located within the individual. A later article clarifies Foucault's arguments on subjectivity. He argues, in the context of explaining the way he sees power as operating to turn individuals into subjects,

'This form of power applies itself to immediate everyday life which categorises the individual, marks him by his own individuality, attaches him to his own identity ... It is a form of power which makes individuals subjects. There are two meanings of the word subject: subject to someone else by control and dependence, and tied to his own identity by a conscience or self knowledge. Both meanings suggest a form of power which subjugates and makes subject to.'(in Dreyfus and Rabinow, 1986:212).

Both De Lauretis and Hollway use this conception of the construction of subjectivity in their work. Hollway quotes the definition she and her colleagues used in an early work:

'We use subjectivity to refer to individuality and self-awareness - the condition of being a subject - but understand in this usage that subjects are always dynamic and multiple, always positioned in relation to discourses and practices and produced by these - the condition of being subject.'(Henriques et al 1984:3).

Here I argue that the feminist analyses of male sexuality contained within the work on incest can benefit from the incorporation of such an account of the construction of sexuality. As discussed in Chapter Two, De Lauretis uses Foucault's work on the deployment of sexuality to theorise, in much the same way, the deployment of gender. It is De Lauretis' work that I draw on most explicitly here, but I want to highlight

¹⁷ I shall not repeat the arguments around Foucault's lack of interest in gender here. The discussions of the corresponding section of chapter two is taken as the point of departure of this discussion.

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Hollway's important argument that discourses on sexuality are gendered, such that the subjectivities informed by them are engendered.

De Lauretis focuses on the construction or deployment of gender as it occurs through the processes of representation and self-representation. Her fundamental arguments, within this context, are as follows:

- i) the construction of gender is both the product and the process of its representation and self-representation. The individual lives, or 'performs' in Butler's (1990) terms, the representation as a self-representation, and that performance constitutes gender.
- ii) (rewriting Althusser) gender has the function (which defines it) of constituting individuals as men and women. Here De Lauretis stresses the relational character of gender. Masculinity is defined in relation to women so that when a man is 'hailed' by a representation he is placed within a category of people ('men') and in relation to another category of people ('women'). (It will be recalled that it is this relational aspect of the construction of sexuality that a feminist critique of Foucault illuminates (Chapter Two)).

The fundamental feminist argument in the work on incestuous abuse is that, given the ways in which sexuality is constructed in our society, sexual abuse is not surprising. Adding to this that one of the ways in which children are constructed is as possessions, especially the possessions of their parents or adult caretakers, feminist authors argue furthermore that child sexual abuse and incestuous abuse are unsurprising. Taking De Lauretis' arguments back into the realm of sexuality, the feminist arguments on sexuality in the feminist work on incest can be rewritten as follows.

1. Sexuality is informed by the discourses in which we live. Because incestuous abuse is something which men tend to do to girls or young women, the construction that feminist analyses concentrate upon is masculine (hetero)sexuality. They argue that the predominant way ^{which} it is represented is as an aggressive, uncontrollable, dominant force. The feminist analyses of incest point to these representations, where 'male sexuality represents strength, dominance and success'(Rush, 1980a:176), which abound in several different arenas of society. De Lauretis draws on Althusser's notion of interpellation to explain how the representation becomes self-representation (which may in turn influence the representation). Interpellation is the process by which individuals are 'hailed' ^{by} the

discourse. That is, they recognise themselves in the representation so that the representation can be said to inform/deploy his gender/sexuality/subjectivity.

This rewriting moves the arguments made in the feminist analyses of incestuous abuse into a different theoretical framework. It moves it away from one in which sexuality is said to be constructed through 'ideology', a term used in the feminist accounts of incest (especially in Ward (1984) and by MacLeod and Saraga (1988)), to one in which it is 'discursively informed'.

The implications of such a move are as follows. First, regarding masculine sexuality as discursively informed rather than ideologically conditioned is a theoretical move away from associations of ideology as emanating from the state with principally economic objectives. Instead, in this Foucauldian influenced position, discourses may be separated from the state and its aims: they are more dispersed in origin and may not reproduce a coherent strategy. This position allows for the contradictions amongst representations and self-representations of masculine sexuality to which MacLeod and Saraga point, which sit uncomfortably with an understanding of ideology as part of one coherent plan:

'Obviously this is a crude account of a complex phenomenon; male sexuality is not one-dimensional, and within a culture oppositional ideologies exist (for example, men as caretakers of their families, gentle lovers and protectors of their daughters), and have their impact on self-definition and cultural practices.'(MacLeod and Saraga, 1988:41).

This move is also one away from the notion that ideology is imposed on the social 'reality' as a sort of glue which holds relations as they are. In the alternative position, the discourses are both productive of and a part of social reality. The relationship is more dynamic between representation and self-representation.

Thus the feminist argument in this formulation is that although there are several ways in which masculine sexuality is informed, it is repeatedly represented in one particular way, a way which is valorised and which works to (in)form the self representation of men in the realm of sexual behaviour, shaping their actions and their understanding of those actions.

2. The second important part of the feminist argument which is not highlighted in the texts themselves is that this deployment of a masculine sexuality carries within a relational aspect. It includes a relation to women, that thereby, as discussed in Chapter Two, deploys a *gender* relation between male and female.

In Ward's argument, 'masculine sexuality is inculcated in men and women alike as being concerned with conquering: 'getting a woman'.'(1984:200). This concise statement can be used to illustrate the position I argue here. The first point to note is that this representation of masculine sexuality is there to be seen/heard by both men and women. In the argument above I concentrated on the argument for the construction of men's sexuality. However, women are also exposed to this representation of masculine sexuality in their daily lives, and they take account of it (as in the disciplinary mode of watching over themselves, altering their geographical movements as Hanmer and Saunders (1984) argue, or dressing according to this understanding of men's sexuality). But whilst they take account of it in this way, they are not generally 'hailed' by it as are men. It does not form a part of the process by which their sexuality is formed. In this sense, the representation of masculine sexuality as dominant, aggressive, spontaneous, etc. forms a part of women's relationship to men, that is, it does not subjectify women but it does 'deploy' a gender relation.

Men's relationship to this representation is such that it can form a part of the process of subjectification because they are 'hailed' by it (although they may resist by drawing on other representation, as MacLeod and Saraga suggest). The relational aspect is such that in this process of subjectification, women are objectified: 'getting a woman'. The representation and self-representation of male sexuality includes a gender relation that positions women as objects. This objectification has been a long standing argument in feminism.

Through generally accepted discourses, therefore, men are subjectified and women objectified. Feminist writers on incest argue that it is 'normal' that men impose their sexual desires on women. Sexual abuse is an extreme end of all male sexual behaviour that is informed in this way (see eg. MacKinnon, 1982,1987,1989). In sexual abuse, the subjectification of men and the objectification of women is immediate and graphic. Sexual abuse involves the level of male power Andrea Dworkin describes as an 'I am', what she terms a 'metaphysical assertion of self' (1981:13). It has been argued that sexual murder

can be analysed in terms a project of 'masculine transcendence' (Cameron and Fraser, 1987). Cameron and Fraser point to the emphasis that has been placed in Western philosophy and literature on transcendence: 'the struggle to free oneself, by a conscious act of will, from the material constraints which normally determine human destiny.'(1987:168). This project informs masculine sexuality, where the 'motifs' are 'performance, penetration, conquest' (1987:169). In sexual abuse, the man is reaffirmed to himself as an acting subject. He is subjectified. In the process of his subjectification, the woman/child is objectified. Sexual murder is the ultimate objectification, but in sexual abuse, too, the woman/child is treated as if she were an object.

In the context of incestuous abuse, MacLeod and Saraga point to the 'long established discourse on male sexuality as subject and everything else as object dominates cultural expression.'(1988:12). Ward argues 'masculine sexual predatoriness flourishes - always with Woman as the object of its inhumanity'(1984:200). This Woman is therefore the constructed object of masculine sexuality.

3. Thus women are positioned as sexual objects, within those discourses which are primarily 'speaking to' men. The feminist arguments that can be seen to consider the processes of subjectification for girls and women have tended to focus not on the general process of construction for all girls and women but on the effects on those who have been abused. The feminist argument here, in my rewriting, is that the survivor's understanding of herself is often informed by the Father's discourse, that is, by both his actions and his words. Feminist work has not just looked at the effects of abuse in terms of physical and clinically recognised psychological damage. Feminists have also argued that incestuous abuse has repercussions for the survivor's identity and sexuality. His actions and words (which are, of course, more widely informed by discourses on sexuality and sexual abuse) contribute to her subjectivity. Herman and Hirschman note that 'almost every one of fifteen women described herself as a 'witch', 'bitch' or 'whore'' (1977:751). Ward considers Lukianowicz's (1972) conclusion that some of the survivors 'became promiscuous' and argues that this should be understood as 'acting out the sexual object role that they had been given within the family.'(1984:154). Ward suggests that this response should be seen as self-assertion. Drawing on the work of O'Donnell and Craney (1982) she argues that the survivors have been given status only as objects of sexual desire, and by being promiscuous or entering prostitution their behaviour flaunts the real status of women (1984:155).

The survivor of incestuous abuse does not just simply take on the label the father's behaviour and words gave her, but his position in her life and his proximity makes his influence a strong one amongst the various ways which she could come to understand her self and her sexuality. One survivor reported 'he used to say 'you want this' ... that was drummed into me' (in Kelly, 1988b:211). Another: 'that was when he started telling me I was a bitch and a slut and a cheap tramp. When I left home, that was what I thought I was, because I felt as though I'd let it all happen!'(in Ward, 1984:70).

4. There has been a debt to the work on rape in the arguments around incest, and to the feminist work on violence against women generally. But the feminist analyses of incestuous abuse have also had an extra dimension of 'normal' male sexuality to explain. This is the age dimension, which is explained in much the same way as the construction of masculine sexuality generally. That is, as informed by representations that abound in popular culture. Heterosexuality is repeatedly constructed as an older man/younger woman. There are also implications here for the construction of female sexuality/subjectivity. Chesler noted that 'women are encouraged to commit incest as a way of life ... as opposed to marrying our fathers we marry men like our fathers .. men who are older than us, have more money than us, more power than us, are taller than us ... our fathers.'(quoted in Herman, 1981:57-8). Rush documents the media representations of the older man/younger girl combination. In film scripts

'from Mary Pickford and Shirley Temple to Tatum O'Neal, the little girl of the silver screen may have changed her costume, cut her curls ... but her relationship to men has remained unaltered... she still sacrificed for, pursued or reformed a father figure... The little girl/grown man combination proved so successful that 'Daddy Long Legs' in which an orphaned child grows up and actually marries her rich, middle aged benefactor, was adapted for film four times.'(1980a:116-7).

In addition to the presentation of girl children as cute and sexually provocative, Rush notes the representation of grown women as childlike, and the corresponding representation of strong women as unattractive (Rush, 1980a:117). MacKinnon has argued that 'women's infantilisation evokes pedophilia' (1982:530). Driver also argues that in several different arenas, Western societies are 'paedophilic': 'the child is made to look or act like a woman, and the woman made to look or act like a child.'(1989:23). This is 'such an everyday part of our lives that we hardly notice it - in a Shirley Temple or Marilyn Munroe film, or an adult woman's baby doll nightgown, for example, or the absurd

coyness of those bikinis designed for toddlers.'(1989:23). She quotes an abuser who said: 'Look at all the millions of dollars that are being spent by old bags trying to make themselves look young - why should I feel like a pervert for going for someone who is really young?'(1989:13). In the feminist analysis, he is not a pervert, he is, as he himself recognises, a 'mirror of our culture'. In other words, he is perverse only to the extent that 'modern society is ... in actual fact, and directly, perverse.'(Foucault, 1981:47).

5. The feminist analyses of incest, therefore, place incest within the context of the accepted discourse of male sexuality. Where the abuse takes place within the household, the feminist analyses see an intersection of the discourse on male sexuality with discourses on children that represent them as possessions, in particular the possessions of their caretakers, whether parents or otherwise. Ward argues that girl children are especially regarded as the possessions of the father of a family: 'In cases of sexual molestation/rape by a Stranger, many Fathers are heard to make remarks such as: 'I'll kill the bastard! *She's mine*. How dare he! The phrase 'She's mine' captures the essential connection in Father-Daughter relations.'(1984:197). His behaviour has to be related 'to the whole system of social values about sexuality and the family in which he exists.'(Nelson, 1987:75). In father-daughter incestuous abuse, the feminist analyses argue, no other man's property is offended (Herman, 1981; Armstrong, 1987). The children belong to the parents and ultimately to the male head of the family.

The feminist analyses, therefore, theorise incestuous abuse within the context of discourses which can be said to inform the abuse. Incest is theoretically placed at the intersection of discourses on predatory masculine (hetero)sexuality, children as sexually attractive and children as possessions of the parents (especially the father). These socially accepted discourses are the context within which incestuous abuse has to be analysed, highlighting the contradiction between incest as a crime on the one hand, and incest as socially informed and in that sense unsurprising on the other. In contrast to Foucault's concentration on the periphery with corresponding normalising effects, the feminist analyses have concentrated on the middle ground, the 'normal'. They have argued that incestuous abuse has to be understood with the 'normal' and 'acceptable' as context.

Discourse

It has been objected that Foucault's concentration on the production of discourse is not applicable to women's situation, that silence is more relevant to women:

'Much of our feminist work ... is beginning to show that silence is and has been to modern women's lives what Foucault has argued that knowledge and discourse are and have been to modern men's: the major product of the most significant power that shapes us.'(West, 1989:66).

Foucault did place silence within his thesis. He argues in THS that silence can form a part of discourse

'Silence ... is less the absolute limit of discourse, the other side from which it is separated by a strict boundary, than an element that functions alongside things said, with them and in relation to them within over all strategies.'(1981:27).

West's argument is justified to the extent that Foucault does seem to neglect this argument as his thesis concentrates on the ways in which sexuality has been 'put into discourse'. As West recognises, her argument is particularly pertinent to incestuous and child sexual abuse. Feminist writers have stressed both the silence that women survivor's have had to keep (either due to threats, fears or because they are not heard when they do speak)¹⁸ as well as the wider silence that has kept the nature of incestuous abuse secret. Rush (1980a) refers to child sexual abuse as 'the best kept secret', the Feminist Review collective to 'family secrets' (1988) and Butler (1978) to a 'conspiracy of silence'.

Drawing attention to and breaking this silence has indeed been a part of feminist analyses. However, feminist analyses have not just pointed to a silence. One of the lines of feminist critique is that incest *has* been spoken about, but that it has been spoken about

¹⁸ Recent work on sexual abuse has revealed that many children who have been abused *do* tell somebody, but that they are either not heard at all, or are not heard in such a way that the extent of sexual assault is publically known (Kelly, Regan and Burton, 1991). This raises the question of conditions of *hearing*, something which Foucault, with his concentration on speaking, left unexplored.

falsely. As Foucault's approach to sexuality would prompt, there has not been simply an imposition of silence around incest. It is not the case that no one has been talking about incest. The breaking down of the myths about incest has been a major part of the feminist work in this area. The myths are specific forms of ones which surround all forms of violence against women (Kelly, 1988b:34-6).

In this section I consider the feminist critique of the myths of incest, and argue that Foucault's work can provide pointers as to how these myths can be theorised. Such an analysis suggests that the myths are not simply falsehoods or operations of 'rape ideology' (Ward, 1984), but are contradictory and complex overlapping of several different sorts of knowledges with different origins and different targets. The silence of women survivors, moreover, should be placed within the ways in which incest has been spoken about and analysed in relation to them. As the 'speak outs' on incest have shown, several aspects of the disparate discourse on incest did require the silence of the survivors in order to maintain credibility. It is on the basis of survivors' accounts that the feminist knowledge has been built, and that has created space for more survivors to speak out.

Nelson entitled her book 'Incest: Fact and Myth'(1987). In that book, Nelson contrasts the feminist understanding of what incest is about with the myths of incest found in common sense understandings of incest and medical/psychological theories and practices. This is also the style of critique in other feminist accounts of incest (eg. Herman, 1981 and Driver, 1989). The 'myths' of incest tend to be set up in opposition to the feminist accounts, as a block of non-feminist perspectives on incest. Ward (1984) covers many of the myths with her term 'rape ideology', and Dominelli (1989) with her term 'patriarchal ideology'. The feminist knowledge of incest is then used to illustrate the falsity of these myths. I want to do something different with the feminist criticisms. The purpose is to investigate the block of non-feminist arguments because they have different targets and may have different results. As the discussions of Chapter Two have suggested, the framework within which I shall resituate the feminist critique does not regard these ways of talking about incest as simply myths, but seeks to map out their different origins, and the ways in which they function in relation to each other and according to larger strategies.

One important division to make is between those ways of talking about incest which construct the object 'incest' as something other than would a feminist knowledge, on

the one hand, and those which, although in important ways converging with the feminist knowledge in what they see, diverge from a feminist knowledge in what they see incest as 'about'. The first way of speaking about incest is that which denies its occurrence, denies it as a problem and/or locates incest geographically as a cultural practice. Nelson notes the many different areas that she was assured incest was a 'way of life'. These ways of speaking are on a par with Foucault's old ways of speaking about sex, in the sense that they do not speak to surround and generate knowledge about incest, but to deny it as a problem.

It is the second type of 'myth' that is in a sense more of a problem for feminism because it acknowledges that incestuous abuse occurs, and more or less accepts that the form it takes amounts to child sexual abuse. Yet these myths construct incest as 'about' phenomena other than those that feminists place at the centre of attention. They are ways of talking which, although they may have disparate origins, frequently problematise incest in such a way that incest is drawn into a medico-psychological domain. The ways in which they problematise incest contrast with feminist knowledge. The structure of the following discussion is similar to that adopted by several of the feminist writers in that it is divided according to the separate targets that are constructed through the various ways of talking about incest.¹⁹ Again, this exercise is placing a framework around what feminist accounts have already argued, an exercise that uses Foucault's notion of the strategies of the deployment of sexuality in a rewriting of feminist accounts. It will be recalled that Foucault's four strategies were: the psychiatrisation of perverse pleasures; a hysterisation of women's bodies, a pedagogisation of children's sex and a socialisation of procreative behaviour (1981:104-5).

The Perverse Male

The feminist analyses have been critical of the notion that the person who abuses children is deviant, or, more specifically, a sexual 'pervert'. It will be clear from the above discussions that the feminist analyses have argued that the incest abuser is not

¹⁹ Ward also looks at the myths as they surround the different actors: the Daughters, the Mothers, the Fathers. However, as I've suggested, her theoretical approach is somewhat different, since it is much more akin to an analysis of ideology such as that of Althusser (1977).

sexually perverted, but is acting within the parameters of normal masculine sexuality. Feminists have argued that the depiction of the abuser as a pervert is a myth repeated in common knowledge as well as in academic explanation and treatment programmes. Ward quotes Weinberg, a sociologist, who states that

'[Incest] is a behaviour that disrupts or destroys the social intimacy and sexual distance upon which family unity depends. It is the recourse of very disturbed and *very perverse* persons.'(1951, quoted in Ward, 1984:92, italics added).

Nelson quotes a study which depicted the man as deviant: it reported that half the sample of incest offenders were alcoholics 'and a great many more were imbeciles' (Nelson, 1987:76). Some writers have even found 'atrophy of the frontal lobe' (Nelson, 1987:76). Nelson lists the sexual perversities these men have been said to have: they are 'undersexed, oversexed, unconscious homosexuals, uninhibited heterosexuals'(1987:76). One recent study which clearly sets up its questions in a way that defines the problem of incest as a sexual response is entitled: 'Erectile responses among heterosexual child molesters, father-daughter incest offenders and matched non-offenders: five distinct age preference profiles.'(Barbaree and Marshall, 1989).

Trying to identify a particular sexual preference in incest offenders drastically misses the ways in which normal sexuality, normal power relations and the normal family are implicated in incestuous abuse. The men who are known to have abused children are not perverted, but 'normal', everyday men:

'The aggressors are not outcasts and strangers; they are neighbours, family friends, uncles, cousins, stepfathers and fathers.'(Herman, 1981:7).

'In the case histories that I have read, and from women I have talked to, it is obvious that the Fathers come from every class in society. A judge, a barrister, a diplomat, an eminent doctor, a university lecturer, a teacher, a university student, a business man, a film star, a labourer, a tradesman, a public servant, a farmer, a counsellor, a minister of religion, a soldier, a politician, unemployed, handicapped, very old, very young: Every man.'(Ward, 1984:87).

Thus the feminist analyses challenge the construction of the abuser as sexually perverted. In effect they accuse those who regard the incest offender as perverted of making the move from act to species that Foucault argues the deployment of sexuality makes.

The Colluding Mother

Foucault argues that the strategy he names 'the hysterisation of women's bodies' included the assertion that the feminine body 'produced and had to guarantee [the life of children], by virtue of a biological-moral responsibility lasting through the entire period of the children's education: the Mother, with her negative image of 'nervous women' constituted the most visible form of this hysterisation.'(1981:104). Feminists have highlighted the ways in which the mother of an incestuously abused child is repeatedly depicted as an incompetent mother. Not only are her mothering abilities judged, but her 'incompetence' have led her to be held in some part responsible for the abuse.

'[A husband may be given] an extra push by a wife who arranges situations that allow privacy between father and daughter. She may, for example, arrange her work schedule so that it takes her away from home in the evenings, and tell her daughter to 'take care of dad'.'

'Stories from the mother that they could not be more surprised can generally be discounted - we have simply not seen an innocent mother in long-standing incest, although the mother escapes the punishment that her husband is likely to suffer.'(both from Kempe and Kempe, quoted in Nelson 1982:55, 56)

Nelson notes that when the mothers are not depicted as collusive, they are depicted as spiteful:

'[When] wives report the incestuous liaison it is not so much because they object to the incestuous act, but because they are angry over some other matter.'(Henderson, quoted in Nelson, 1982:56).

In these mother-blaming arguments, the mother is drawn into the psychiatrisation of families in which incest occurs. She is being drawn as an inadequate mother in parallel with the man's depiction as a sexual pervert. Armstrong notes this trend to build 'the 'profile' of the 'incest mother'.'(1987:265). Her sexual service to the man is often central in these descriptions:

'She keeps herself tired and worn out ... She is frigid and wants no sex with her husband. This is another way of bowing out of her role as a wife, and giving reason to the husband to look elsewhere for sex.'(Justice and Justice, quoted in Herman, 1981)

Herman notes further comments of 'experts' on mothers in households where incestuous and child abuse have occurred. Cromier, a psychiatrist, described the mothers as 'frigid, hostile, unloving women'; Walters, an 'expert on child abuse' described them as 'very unattractive'(both quoted in Herman, 1981:43).

The Seductive Daughter

Foucault suggests that a further strategy of the deployment of sexuality involved

'a double assertion that practically all children are prone to indulge in sexual activity; and that, being unwarranted, at the same time 'natural' and 'contrary to nature', this sexual activity posed physical and moral, individual and collective dangers. ... Parents, families, doctors and eventually psychologists would have to take charge, in a continuous way, of this precious and perilous, dangerous and endangered sexual potential'(1981:104).

The feminist analyses of incest trace the various ways in which the abused child is held responsible for the abuse. One predominant way that the girl child is spoken about is as seductive and sexually forward. Ward argues that there is widespread belief in the 'Lolita syndrome' (1984:139), the name of the girl in Nabokov's novel who seduces an adult man. One oft-quoted paper argued

'These children undoubtedly do not deserve completely the cloak of innocence with which they have been endowed by moralists, social reformers and legislators ... these children were distinguished as unusually charming and attractive ... frequently we considered the possibility that the child might have been the actual seducer, rather than the one innocently seduced.'(Bender and Blau, 1937, quoted in Ward 1984:90).

Another research team saw the sexuality of the girl child as responsible: 'Since the sexuality of these girls led to the arrest and incarceration of the father and disruption of the home, they had the experience of seeing their destructive, omnipotent fantasies come true.'(Kaufman et al, 1954, quoted in Ward 1984:148). More recently, it has been argued

'Although public and professional sentiment is generally empathetic toward the daughter and negative toward the father, *there are indications that the daughter may play an active and initiating role in the incestuous relationship* ... the daughter is usually the passive participant who

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seldom complains or resists.'(Sarles, 1975, quoted in Ward, 1984:157, her italics).

Thus the girl child is depicted as cooperating in the abuse. Nelson quotes Leroy Schultz, who argued 'Both offender and victim are symbiotic or form a cooperative dyad.'(1987:40). Ward quotes Weiner (1962) who writes: there is much to show 'that the daughters, like their mothers, are not merely innocent pawns of their father's will.'(1984:148).

Many of the feminist writers argue that Freudian theory has been instrumental in the forging of this myth. Freud had initially suggested that childhood sexual trauma had a role to play in the development of 'hysteria' in adult women (Breuer and Freud, 1955). Later, however, he retracted this theory, substituting instead the argument that his patients were verbalising their incestuous *fantasies* which were a normal part of development (Masson, 1984; Arens, 1987). Much clinical work that has dealt with cases of actual incestuous abuse has been carried out in the shadow of such a theory, regarding the daughter as acting out incestuous desires which normally would be psychically resolved.

Ward notes a contradiction much like Foucault's 'double assertion'. The children are non-sexual until there is an accusation of incestuous abuse, at which they become sexually provocative:

'It is a curious fact that it is generally conservative thinking which regards children as innocent non-sexual vessels who must be coddled and protected ... and yet it is the same conservative view which treats the Daughter as She-Devils in the guise of children - especially when the public reputation of the father is threatened.'(1984:148).

Presenting the feminist critique within Foucault's schema illustrates four broad points. First it makes a useful separation between the 'denial' ways of talking about incest and those that whilst agreeing in a broad way with the nature of incest under discussion, problematise incest differently from feminism. Second, it illustrates that the ways in which these non-feminist ways of talking about incest can be regarded

i) as having different origins eg. in literature, different schools of psychology, in 'common knowledge'. The feminist analyses illustrate the convergences of these different types of psychological theory such as psychoanalytic, systemic family therapy and behavioural explanations. They may also converge with and inform the way incest is spoken about in other settings.

ii) as being not simply myths but ways of speaking about incest that are tied to practices. Most explicitly in clinical settings the knowledge of incest that arises is based on the work of practitioners and is implemented in their work. This illustrates Foucault's notion of power/knowledge: the knowledges of incest are often both based upon and inform practices which involve the exercise of power. They are 'made to function as true'. Thus it is not simply that these ways of talking about incest are myths, that they are wrong, but that they constitute knowledges, often institutionalised as truths with practices informed by and informing them.

iii) as creating and deploying different personages, as Foucault described the operations of the deployment of sexuality. The strategies schema illustrates the different 'targets' of the myths. Once these personages were constructed the move to the 'dysfunctional family' was not very far. Originating from systems theory, this perspective regards the family as a whole as dysfunctional, each member contributing in some way to this dysfunction. Such a theory has been widely criticised by feminists.

iv) Taking the rewriting further, ways of speaking about incest can be seen to involve normalisation effects. The dysfunctional family theory is explicit in its implication that there is a healthy family system. Feminists have been critical of systemic family therapy theory because of its narrow focus on family members interactions, its non-blaming approach which gives responsibility to the family's interactions as a system not to an individual member of the family, its therefore circular view of causality, and its lack of direct challenge to the family as an institution in which power is unequally exercised and gender oppression occurs. Within family therapy theory, it has been argued, the social construction of power and gender within the family are treated like 'family secrets' (Hare-Mustin, 1987:25).²⁰

²⁰ For further discussion of feminist critique of family therapy see Goldner (1985), Hare-Mustin (1987) and Perelberg and Miller (1990).

An important question for this rewriting is where to place the feminist knowledge of incest and the survivors' discourse which forms a solid basis for the feminist analyses. In Chapter 2 I discussed the possible antithesis between Foucault and feminism on claims to truth. It is clear that in the work on myths the feminist analyses of incest are involved in a 'deconstruction of truths' as advocated by Smart (1989). However, the feminist analyses might be seen as setting up another Truth of incest in contrast to the falsity of the various myths. This is most explicit in Nelson's title: 'Incest: Fact and Myth'.

This problem is an important one for feminism. Through the critique of the 'myths' of incest the feminist work simultaneously constructs its version of what incest is 'about'. Following Foucault's project leads, as discussed in Chapter Two, to a reflection on the conditions and discourse of feminism. Here, specifically, the issue is the status of the feminist analyses of incest. In the remainder of this section I want to argue not that feminism can get around this problem, but that the reflexivity to which it leads can be a healthy one for feminism. It forces feminists to ask: How do feminists decide what incest is 'about'?

I have noted above that feminist work on rape and sexual assault can be seen to have given a space or context in which the work on incestuous assault took place. Feminist analyses of incest are based in large part on the survivors' accounts that have been given over the past fifteen years or so. These accounts can be regarded as 'subjugated knowledges' in Foucault's sense. Foucault spoke of subjugated knowledges as 'disguised' in a way which recalls the lack of acknowledgment of incestuous abuse in the theorisings of sociologists, psychologists and anthropologists:

'[Subjugated knowledges are] those blocks of historical knowledge which were present but disguised within the body of functionalist and systematising theory and which criticism ... has been able to reveal.'(1980a:82).

The survivors' accounts have been either ignored or reinterpreted in the discourses of psychology or medicine. Feminism, instead, takes them as its starting point, the foundation for its critique of other ways in which incest has been understood. The

survivors accounts are 'subjugated knowledges' to the extent that they fit Foucault's description:

'knowledges that have been disqualified as inadequate to their task or insufficiently elaborated: naive knowledges, located down on the hierarchy, beneath the required level of cognition or scientificity. I also believe it is through the reemergence of these low ranking knowledges, these unqualified, even directly disqualified knowledges (such as that of the psychiatric patient, the ill person, of the nurse, the doctor - parallel and marginal as they are to the knowledge of medicine - that of the delinquent, etc.) and which involve what I would call popular knowledge though it is far from common sense knowledge, but is on the contrary a particular, local, regional knowledge, a differential knowledge incapable of unanimity and which owes its force only to the harshness with which it is opposed by everything surrounding it - that it is through the reappearance of this knowledge, of these popular knowledges, these disqualified knowledges, that criticism performs its work.'(1980a:82).

This description of subjugated knowledges fits well with survivors' accounts of incestuous abuse. The survivors accounts have been directly disqualified, most explicitly as fantasies by Freudian legacy, and are indeed opposed to other ways of talking about incest. Their reemergence has formed, moreover, the basis of the feminist critique of ways of talking about incest. Using the survivors accounts gives feminism a strong foundation for such a critique. However, it is the move from critique to theory that is problematic. The worry is how feminist knowledge can escape becoming a self appointed authority such as those myths and 'knowledges' to which it was originally opposed (Gunew, 1990).

However, the feminist analyses of incestuous abuse do not seek to set themselves up as the guardians of the access to Truth and objectivity. Although feminist analyses are empirical in the sense that they are based in the main upon women's oral evidence, they are not empiricist in the sense that they regard the social world as simply there to be accurately described. As discussed in Chapter Two, an embrace of Foucault's claim that knowledge is tied to power relations and can deploy power relations as it is used does not mean that feminism is unable to make claims to truth, but that feminism has to admit and be aware of its connections with power. The feminist work on incest is already reflexive about its claims to knowledge, and the politics of its language. The substitution of the term 'survivor' for 'victim' to convey the strength that these women have and the various renamings of incest are examples of the reflexivity that feminism has had in this area.

Feminism has been sensitive to the unintended implications of its language²¹. The feminist analyses of incest are necessarily reinterpretations of the 'subjugated knowledges' of survivors.²² As such, they are not objective truths but feminist truths, built on the foundation of survivor's accounts, but not identical with them²³. The feminist truths are a knowledge base that can be and is altered as more information comes to light. This knowledge is the one on which feminists base their critique and their actions.

Such a stance is not one which 'accepts the dominant groups insistence that their right to hold distorted views ... is intellectually legitimate'(Harding, 1987:295). It is in the first instance a descriptive stance. It notes that others do hold opposing views, ones that feminists would regard as wrong or irrelevant, but is also aware of its own process of knowledge formation, avoiding setting itself up as an unchanging Truth. Feminist knowledge of incest has a firm foundation in the survivors' accounts, but this does not mean that it is fixed and unable to adapt to new information as the knowledge base expands.

Thus, this section can be concluded, feminists have not just pointed to the silence around incestuous abuse, but have presented critiques of the ways in which incest has been spoken about. The 'myths' that feminists have identified are often doing different things. In this discussion I have separated the 'denial' ways of speaking about incest from those which regard incest as a form of child sexual abuse, but construct different (non-feminist) frameworks by which to understand incestuous abuse. These ways of speaking about incest create personages: the perverse man, the colluding mother, the seductive daughter, etc. The feminist analyses of the 'myths' around incest dovetail with the silence that survivors and others have kept about incest. Many of them require the silence of survivors of incestuous abuse in order to maintain credibility. However, it is not the case that now survivors have spoken and feminist work has presented its analysis, these other ways of speaking about incest disappear. The contradictory understandings now coexist.

²¹ See Kitzinger (1988) on the dangers of continuing a language of innocence when discussing childhood in relation to child sexual abuse.

²² I do not mean to imply a rigid distinction between 'feminists' and 'incest survivors' here. Some of the feminist works on incest are by women who have survived incestuous abuse, and of course many incest survivors are feminists.

²³ As discussed above, the survivors are not untouched by the ways of 'explaining' the abuse that the abusers use.

Conclusion

In this chapter I have explored feminist work on incest in light of the preceding chapter's discussion of Foucault's potential within a feminist project. In the first section, I suggested that the feminist analyses of incest illustrate the different sorts of power and power mechanisms at work in families, powers which are in operation in the commission of incestuous abuse at the same time as they are to a certain extent socially acceptable powers. Secondly, in investigating incestuous abuse, the feminist analyses illustrate that discourses of male and parental privileges in families intersect with discourses of normal male sexuality. Male sexuality has to be seen as discursively formed rather than innately given, and in this chapter I have considered how a Foucauldian perspective can be used to take this argument further. Thirdly, I have considered the feminist critique of the 'myths' of incest, and suggested that these ways of speaking be understood not as 'patriarchal' falsehoods, but as instances of power/knowledge, producing the object of which they speak and placing the survivor's accounts into the position of 'subjugated knowledges'. In many ways what I have accomplished within this chapter is a rewriting of the feminist analyses of incest. This rewriting has mapped out the feminist analyses indicating their breadth and illuminating their subtleties. It has also pushed the analyses farther, making arguments based upon Chapter Two's discussions. In the next chapter, I explore the arguments that Foucault himself has made specifically about incest.

Chapter Four

Incest (II)

Thus far I have not mentioned the fact that Foucault did discuss incest in 'The History of Sexuality: An Introduction'(1981). In fact, although the passages that refer to incest in THS are few, and have previously been left unmentioned in writings on THS, incest is placed at a pivotal position in Foucault's description of the historical production of sexuality. It is at a crossroads between what he terms the system of alliances and the deployment of sexuality. This has implications for his schema of power and for his conception of the place of the family. In this chapter I present Foucault's comments on incest, and argue that these may be of some interest to a feminist investigation of the way in which incest is spoken about and in particular in what to do with the notion of the incest prohibition.

Foucault on Incest

It will be recalled that the two powers that have been exercised over sex, according to Foucault's argument, are first, the juridico-discursive mode which is a prohibitive power that divides the forbidden sexual acts from the permitted and second, the proliferating and productive power of power/knowledge strategies and networks. These two powers over sex relate, furthermore, to two different ways by which people, as sexed bodies, have been related to each other: the system of alliances and the deployment of sexuality respectively. Most work on Foucault has concentrated upon the deployment of sexuality and the bio-politics associated with it. When considering the place of incest in Foucault's work, however, it is crucial to also bring the system of alliance into the picture. With it comes an acknowledgement of continuing operations of juridico-discursive power.

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The deployment of alliance related people to each other through kinship. People were related to one another as sexual bodies (especially in the reproductive sense), through a system of 'marriage, of fixation and development of kinship ties, of transmission of names and possessions.'(1981:106). This system revolved around blood, who was related to whom. Within this network, constraints were placed on sexual behaviours or arrangements which would have threatened the continuation of the system, ie. adultery, bigamy, etc. The result of the system of alliances is the reproduction of the institution of marriage and kinship systems. The quality of family life does not come into the system of alliance: it is concerned only with the maintenance of lines of descent and systems of marriage. Thus the systems of alliance had an homoeostatic function, always working to reproduce the social body as the same.

Since the eighteenth century, however, Foucault suggests that the deployment of sexuality has been superimposed on the systems of alliance. The deployment of sexuality is also a network linking people as sexual beings, but relying on different mechanisms of power and with different effect. The reproduction of past structures is no longer a goal of the network. Nor does the deployment of sexuality use mechanisms of constraint, repressing those behaviours that threaten the stability of the system. Instead, the deployment of sexuality works to expand and proliferate, operating through the mobile and polymorphous techniques of power.

'The deployment of alliance has as one of its chief objectives to reproduce the interplay of relations and maintain the law that governs them; the deployment of sexuality, on the other hand, engenders a continual extension of areas and forms of control. For the first what is pertinent is the link between partners and the definite statutes; the second is concerned with sensations of the body, the quality of pleasures.'(1981:106).

Although Foucault argues that the deployment of alliance has not been completely supplanted, that it is still at work and still important, it is clear that he believes it has been sufficiently eclipsed by the deployment of sexuality for the latter to now be considered the predominant mode of power's operations over sex. The process of change from one to the other centres on the family. Just as Marx argued that the relations of production of a new society matured within the framework of the old, Foucault argues that the deployment of sexuality was constructed around and on the basis of the deployment of alliance (1981:107).

The family, Foucault proposes, was the privileged institution of the deployment of alliance. It was the family structure that the system of alliance sought to maintain. It

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was also, he contends, the cornerstone in the establishment of the deployment of sexuality. Upon the family there converged a variety of knowledges. These 'intrusions' into the family worked to map out the discrete sexualities contained within the unit. For example, the production of 'childhood sexuality' was put in motion, in part, by the exaltation to parents to beware the dangers of children's masturbation, which drew as a result a line between the sexuality of adults and children within the family unit. Many of the strategies of the deployment of sexuality worked through and were supported by the family, so that the family behaved as a crystal, seemingly the source of sexuality, but actually only reflecting and refracting the operations of the deployment of sexuality all around it (1981:111). Thus the family was pivotal in the operations of the deployment of sexuality as a vehicle and site of its operations. By disseminating and sustaining the deployment of sexuality, the family was 'one of the most valuable tactical components of the deployment.' (1981:111). The family's role was not one of constraining and excluding sexuality, as is often suggested in traditional histories of the Victorian era, but on the contrary, one of supporting and intensifying the deployment of sexuality. Sexuality is therefore 'incestuous from the start', tied as it was and is to the institution of the family.

For Foucault, therefore, the family is tied to incest in two senses. One relates to the system of alliance, and the other to the deployment of sexuality. In the system of alliance, incest is tied to the family because it is the sexual activity which needs to be prohibited for the family structure and the whole alliance system to continue. In the deployment of sexuality, incest is tied to the family because the family is the site at which the strategies which deploy sexuality first operate. Incest is the form of sexuality constantly incited due to the operations of the deployment of sexuality all around it.

The role that Foucault gives incest in his schema is almost that of a bridge in the sense that so long as the deployment of sexuality requires the family, incest belongs both to the system of alliance and to the deployment of sexuality. In the system of alliance, incest is a form of sexual activity that is firmly placed on the side of the forbidden. The incest prohibition is a straightforward example of prohibitive power. It is, Foucault suggests, the cornerstone of the system of alliance, maintaining family roles and the rule of exogamy. However, due to the part played by the family in the deployment of sexuality, incest is continually incited. Sexuality and the family are entwined as the focus of the proliferations of sexualities continually centres on the family. In a sense, incestuous behaviour would therefore be the least remarkable form of sexual behaviour. Thus the incest prohibition and the present family structure which through its operation the incest

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prohibition maintains, are in danger of collapse under the effects of the deployment of sexuality. Foucault argues

'incest ... occupies a central place; it is being constantly solicited and refused; it is an object of obsession and attraction, a dreadful secret and an indispensable pivot. It is manifested as a thing that is strictly forbidden in the family insofar as the latter functions as a deployment of alliance; but it is also a thing that is continuously demanded in order for the family to be a hotbed of constant sexual incitement.'(1981:109).

Foucault explains how the operations of the deployment of sexuality around the family work to sexualise the family and thereby incite incest in an interview taking the example of children's sexuality. Foucault refers to the manuals that were produced for parents in the eighteenth century:

'One might argue that the purpose of these discourses was precisely to prevent children from having a sexuality. But their *effect* was to din it into parents' heads that their children's sex constituted a fundamental problem in terms of their parental educational responsibilities, and to din it into children's heads that their relationship with their own body and their own sex was to be a fundamental problem as far as they were concerned; and this had the consequence of sexually exciting the bodies of children while at the same time fixing the parental gaze and vigilance on the perils of infantile sexuality. The result was the sexualising of the infantile body, a sexualising of the relationship between parent and child, a sexualising of the familial domain.'(1980a:120).

The place that incest takes in Foucault's argument, this pivotal point, is therefore, important in the shape of his overall argument. The two systems of organisation of sexual activity - that of alliance and that of sexuality - and their respective powers, converge around incest. The incest prohibition is a part of the deployment of alliance, and of juridico-discursive power, that lingers on within societies in which the deployment of sexuality now predominates. Foucault's argument seems to be that it does so because in some way the deployment of sexuality 'needs' the family. Foucault is a little vague here and his style of explanation tends to reify both 'the system of alliances' and 'the deployment of sexuality' into acting subjects in contrast with his general insistence on locating the specific mechanisms by which wider trends operate. Foucault speculates on the West's 'obsession' with the universality of an incest taboo. This may be, he argues, a defence against the deployment of sexuality which overwhelms the rules of the system of alliance. Feeling the effects of the deployment of sexuality, one of them the 'affective intensification of family space'(1981:109) as the knowledges and experts crowd around the family watching out for signs of sexuality and making the family watch itself, may have

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led, Foucault suggests, to this insistence that this one rule, the incest prohibition, was the universal rule of all rules. In this way the system of alliance 'resists' the deployment of sexuality. Although over the past two centuries Western societies have created so many technologies that are foreign to the concept of law, Foucault suggests the proliferation of the newer forms of power are feared and, in the case of incest, the comparative safety of legal formulations (such as 'thou shalt not commit incest') is sought once again. Thus there is an 'endless reworking of the transcultural theory of the incest taboo' (1981:110).

However, in a later interview Foucault takes his argument further and argues that the universal incest prohibition is a *recent* creation of certain discourses:

'Incest was a popular practice, and I mean by this, widely practised among the populace, for a very long time. It was towards the end of the 19th century that various social pressures were directed against it. And it is clear that the great interdiction against incest is an invention of the intellectuals. ... If you look for studies by sociologists or anthropologists of the 19th century on incest you won't find any. Sure, there were some scattered medical reports and the like, but the practice of incest didn't really seem to pose a problem at the time.'(1988:302).

With this argument there develops an ambiguity. Is Foucault suggesting that the incest taboo used to exist and kinship patterns were adhered to, as the passages in *THS* imply, or did he mean that this is (merely) the way that the old system is spoken about now. Incidentally, there is a parallel problem with Foucault's writings on juridico-discursive power, in the sense that Foucault never really clarifies whether this model of power really did exist in times past, or whether it is (merely) an historically recent way of speaking about an 'old' power. This is not clarified, but it seems from his interview comments, the only other (published) place he spoke of incest per se, that the latter argument is the one with which he aligned himself. Certainly, the argument of *THS* still works. However the family used to be linked with incest, in discourses of this century incest is part of the discourses both 'old' and 'new', even if both are actually contemporary. That is, there is a modern way of speaking which suggests that at all times *past and present* there has been an universal incest prohibition. This is the argument I shall take Foucault to be advocating.

Thus Foucault suggests that incest is a subject which bridges the two regimes; it is both part of the old (systems of alliance) and of the new (deployment of sexuality) regime. More accurately, Foucault suggests that within the new regime incest is spoken about and constantly reaffirmed as something that belongs to the old regime. That is, when the

topic is raised incest is spoken about as prohibited and, moreover, as universally prohibited. The incest prohibition is clung to within the new regime, for example in academic theorising, whilst the operations of a new power over sex begin to take hold.

This clinging to the incest prohibition within the framework of a newer power is clear, Foucault argues, in the practice of psychoanalysis, the institution *par excellence* of the deployment of sexuality. (Indeed, *THS* could be read as a genealogy of psychoanalysis (Hussain, 1981)). It is here that 'talking sex' has been institutionalised and given the greatest credence. Yet within psychoanalysis, at its very root even, aspects more akin to the deployment of alliance are found. Despite the fact that it appears to question family relationships, and despite the part it played in taking sexuality out of family jurisdiction, psychoanalysis 'rediscovered the law of alliance, the involved workings of marriage and kinship'(1981:113). With the Oedipus complex, incestuous desires and operation of the incest prohibition were rediscovered at the heart of sexuality 'as the principle of its formation and the key of its intelligibility'(1981:113).

Within psychoanalysis, the development of the notion of 'sexuality' remained tied, therefore, to the alliance network because it was guaranteed that 'one would find the parents/children relationship at the root of everyone's sexuality'(1981:113). Without the incest taboo, which causes the parent to frustrate the child's desires, it was declared, sexuality would not be as it is. The formation of each individual's sexuality is tied to their familial relationships and the crucial role of both incestuous desires and the incest prohibition within those relationships. Laws of alliance were thereby incorporated into the deployment of sexuality, reappearing, now saturated with desire, at the heart of psychoanalysis. Psychoanalysis incorporates both the agitation of the deployment of sexuality around the family's sexual activity and the necessity of the incest prohibition. Thus psychoanalysis 'made it possible to explain both the system of alliance and the regime of sexuality'(1981:129).

The place of incest in psychoanalysis also functioned as a point of differentiation between social classes. Foucault's argues that the notion of 'sexuality' spread throughout society by various means. The 'idle' woman of the upper classes was the first to take on sexuality, although eventually everyone was understood to have a sexuality (1981:121). However, Foucault argues that at the end of the nineteenth century the theory of repressed sexuality compensated the bourgeoisie for the general spread of sexuality because it posited differential degrees of repression according to social class. It was held

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that the bourgeoisie's repression of sexuality was so deep that it was a source of constant danger to them. These dangers could be alleviated by freeing sex, allowing sex to speak. Social differentiation, Foucault suggests, was confirmed by the contention that there were these class differences in the intensity of repression (1981:128-30).

For the bourgeoisie, psychoanalysis was the answer, enabling liberation from this repression. Within psychoanalysis individuals were encouraged to express their incestuous desires. At the same time, there was a concern for the practice of incest amongst working class people. Their sexual desires were not repressed but acted upon. Thus the situation was such that 'at a time when incest was being hunted out as a conduct, psychoanalysis was busy revealing it as a desire and alleviating - for those who suffered from the desire - the severity which repressed it'(1981:130).

In summary, therefore, around incest specific aspects of the analytics of blood kept their importance within a society that was more generally following a trend towards an 'analytics of sexuality'. Thus Foucault argues that when the family became a site at which discourses producing sexuality came together, and therefore became a privileged site, the 'home' of sexuality, the incest taboo was reaffirmed as a law that was universally obeyed. Incest seemed as though it might become the most unremarkable sexual behaviour. The constant reaffirmation of the existence of an universal incest prohibition as a fundamental law to society prevented this. Thus a tension between the two systems of power over sex was and is located around incest. Incest is both incited and denied as the family continues to form the site of the operation of the two systems. The incest taboo is momentarily lost as the family became the 'hotbed' of sexuality, and rediscovered, with particular clarity in anthropology and psychoanalytic theory, as a fundamental rule.

Feminist Exploration

What can a feminist reader do with these comments on incest? There are different ways to deal with this question, depending upon where one positions the feminist interest in Foucault's work. I suggest that there are three different positions:

- i) Against. One might make a feminist critique of Foucault's position.
- ii) Within. One might reflect on feminism's place within Foucault's schema.

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iii) Apply. One might explore the usefulness of Foucault's schema to organise the various understandings of incest.

In the previous chapters, whilst unavoidably trespassing to a certain extent on the first two, the emphasis has been on the third of these options. In this chapter, I take each of these approaches in turn, although it is again the third which I advocate as the most profitable, and which I draw upon in later chapters of this thesis.

Criticisms of Foucault's Schema from a Feminist Perspective

In this section, I remain 'outside' Foucault's schema in order to reflect upon it. The emphasis is on whether or not to accept Foucault's arguments on incest. There are two central claims which a feminist critique might pick up. First, a feminist critique might question Foucault's use of the argument that the incest prohibition preserves the family. Secondly, in what sense do the discourses which speak of sexual dangers within the family 'incite incest'?

The first question concerns the place of the incest prohibition in Foucault's schema and the role it is said to have in maintaining the family as an institution. In THS Foucault seems at times to agree with the arguments of writers such as Levi Strauss (1969) when he is speaking about the system of alliance. That is, that the incest prohibition functions to reproduce the family structure because it operates as a rule ensuring marriage outside the family. Feminist analyses would argue that if it is correct that an incest prohibition maintains the family it also maintains the commission of incest, since the family, as it is presently lived in male supremacist societies, actually 'encourages' the practice of incest. There are several arguments that are made to this effect. Drawing attention to the privacy which the family is accorded, the family is depicted by Ward (1984) as a prison in which the children are trapped. Herman (1981) argues that the family in which the mother takes on sole responsibility for the caring role teaches women to serve without demands and men to take and to expect their demands to be obeyed. Butler (1985) argues that children are taught in the family to obey and fear the powerful father figure, and men to regard their children as possessions. Feminists would argue that whatever maintains the family (perhaps this might be termed 'male domination' or 'patriarchy') it is not the incest prohibition. The incest prohibition is a way of talking that contradicts the commission of sexually abusive acts within the family situation. In this way a

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feminist position would criticise the statement that the incest prohibition maintains the family.

However, in my reading, Foucault was not in agreement with those who suggest the incest prohibition maintains the family. Although his work is ambiguous as I have suggested above, he later argued that the incest prohibition was a 'creation' of sociological and anthropological discourse. Thus it is the constant reaffirmation that there is a prohibition and that this prohibition maintains the family that Foucault is speaking about. This discourse on the prohibition speaks of the maintenance of the family, but it also, Foucault argues, functions as a form of 'defence' against the sexualisation of the familial domain. As such, it also 'seeks' to maintain the family. Here the reification of Foucault's terms becomes apparent. The defence against the deployment of sexuality has to be understood, if it is to be convincing, not as one coherent actor, but as a collection of practices and ways of speaking which militate against the effects of the deployment of sexuality in the name of conserving (what is understood to be) the traditional system. These ways of speaking about and acting towards 'the family' may not be internally coherent, nor need they bear strict relation to what happens (as the feminist work on incest reveals about work on the incest prohibition). What Foucault draws attention to is that despite this they are made to function as true. Most people speak and act as if there were an easily intelligible fact - 'the incest prohibition' - that works to maintain the family, in such a way that the discursive fact of the incest prohibition does construct and maintain the family as an institution. Feminist work has also argued that people speak and act as if the incest prohibition exists and that this does maintain the family as it is presently lived as well as making it harder for people to speak about the occurrence of incestuous abuse (see below, Ward, 1984:192).

Thus Foucault's argument can be understood not to agree that these ways of speaking but to point to their existence, and the function that these ways of speaking have in relation to other ways of speaking about sex and the family. A feminist analysis would agree that there is no straightforward social fact of the incest prohibition, but that these ways of speaking about the incest prohibition and the family function in a conservative manner.

When one turns to the comments that Foucault makes about the effects of the deployment of sexuality's ways of speaking, a feminist critique requires more development of Foucault's position. It is clear that the agents of the deployment of sexuality gather

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around the family as it begins to 'broadcast the long complaint of its sexual suffering'(1981:111), and that the discourses of the deployment of sexuality repeatedly couple the family with sexuality, but in what sense do these discourses amount to the 'incitement to incest'?

It seems that there are two senses in which the discourses of the deployment of sexuality 'incite incest'. On the one hand, Foucault might mean that all the talk around the family as a place in which sexuality develops and expresses itself actually incites the act of incest or incestuous abuse. On the other, he might mean that all the talk around the family as a place in which sexuality develops and express itself incites further discourses on incest, eg. as a social problem, a potential social danger as well as an universally avoided behaviour. It is this second sense that Foucault seems to be suggesting when he says

'By devoting so much time to an endless reworking of the transcultural theory of the incest taboo, anthropology has proved worthy of the whole modern deployment of sexuality and the theoretical discourses it generates.'(1981:110).

Responding to the first of these senses, feminist analyses would argue that incestuous abuse is indeed discursively 'incited', but it is not in the 'welfarist' discourses which surround the family, but as discussed in Chapter Three, in the discourses which surround male sexuality and male familial privileges (the accepted power of the Father). Feminists have highlighted the ways in which men are encouraged to approach younger women as their sexual partners, to experience their sexual desires as urgent needs, to regard their children as their possessions, their homes as their castles (see Chapter Three). It is in these discourses that incestuous abuse is 'incited'.

However, it is the second argument that is the more Foucauldian. That is, that the operations of the deployment of sexuality 'discover' another sexual danger within the family: that of incest. The activity around the family and its sexual activities 'incites' incest by 'marking out' the discursive space which incest takes up. Discourses are thereby produced which address the question of incest. Whether incest is spoken about as a social problem or as a behaviour that is avoided, it is still a subject generating more and more talk, putting 'sex into discourse'. Foucault's work highlights the speaking of incest: knowledges of 'perverts', academic theorising on the prohibition, 'common sense' ways of speaking. There are also other ways in which incest is 'in discourse'. Discourse may not always be actual talk about incest. Architecture can 'speak' of incest. For example,

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housing policies that stipulate the number of bedrooms to be given according to age and sex in council homes are an example of this 'speaking' of incest. As discussed in Chapter Three, although this may appear to present a problem for feminism because feminism has always stressed the silence that surrounds incest, feminist analyses have also considered how incest has been spoken about, eg. in non-feminist discourses.

If Foucault is correct then the feminist concern about the danger of incestuous abuse is a part of a concern around the family which pre-existed feminist uncovering of incestuous abuse. The family has always been a site of concern. The feminist argument, however, is not that there has been a silence, but that in those places where incest was spoken about it was spoken about in ways which did not challenge 'normal' societal structures (see Chapter One). Thus, what is different about feminist discourse is that it speaks of incest in ways which located the problem 'outside' the particular family in question, in the operations of power and gender in male supremacist societies.

Feminism's Place Within Foucault's Schema

Where would the feminist analyses of incest fit in Foucault's schema? Posing this question pushes feminism into a self-reflective position. In answering, I explore first, those aspects of feminist analyses which might cause one to regard them as a part of the deployment of sexuality. I conclude that whilst this reflection might be a healthy one for feminism, feminism is more akin to a 'reverse discourse' than a part of the deployment of sexuality. Second, in reflecting on the relationship of feminism to the systems of alliance, I raise the question of the status of the incest prohibition in feminist work.

1. **Feminism and the Deployment of Sexuality.** It is clear that the feminist work on incest, insofar as it is inescapably a 'discourse on sex' (even if this sex is understood as an expression and a means of establishing power), is part of the general landscape which Foucault purports to describe. Historically the feminist work on incest, stretching from the end of the last century to more recent analyses, coincides with the problematisation of incest which for Foucault signals the encroachment of the deployment of sexuality on this terrain. So perhaps the first question to ask in this self reflective mode is: How does feminist work on incest relate to the deployment of sexuality? Feminist work is a knowledge in the sense that there is a bank of observations and a context within which they are analysed and understood. The statistics discussed in Chapter One that have and

are being produced due to feminist instigation of the issue of incestuous abuse are statistics that can be understood as a bio-political knowledge. But is feminist knowledge knowledge that works within the power/knowledges network of the deployment of sexuality?

There are aspects of feminist work on incest which are reminiscent of Foucault's description of the mechanisms and effects of the deployment of sexuality. In particular, there are two elements of feminist work on the issue of incest which might lead one to assimilate them with the deployment of sexuality. One concerns the issue of confession, as a primary mechanism of 'talking sex'. The second concerns the disciplinary power which feminism has arguably set in place both around and within the family. In what follows I will explore these two aspects of feminist work in relation to what Foucault says about them in the context of the deployment of sexuality. I argue that the feminist work differs from the deployment of sexuality in crucial ways so that although reflection on the power of feminist discourse is a healthy exercise for feminism, feminism is not straightforwardly a part of the deployment of sexuality.

First, therefore, is the question of confession. Feminist knowledge does rest upon listening to and restating the words of others (the incest survivors), and to a lesser extent, upon collating statistics to back up the feminist case. Is this not the same process that takes place within the strategies of the deployment of sexuality, who extract confessions upon which to base their knowledge, and through this process 'deploy' sexuality? I want to argue that such an assimilation is incorrect. My argument is that the incest survivors are not 'confessing' in a comparable sense. There are a number of points which can be made to back up my argument.

i) First/Third person. The confession carries with it some notion of speaking to alleviate guilt. In Foucault, following Nietzsche, the guilt is always 'imposed' on the speaker by some outside morality. For example, this is the case in confessions by homosexual men in the courts of countries where homosexuality is criminal. Many women survivors of incestuous abuse (as well as rape and other forms of abuse) may feel guilty or in some way to blame because they move within those discourses which hold women at fault after a sexual abuse (see Chapter Three). They may position themselves within discourses which do not give them any way to understand what happened apart from a self-critical 'how could I let that happen to me/why did I do such and such'. However, the 'confession' of the incest survivor is not a confession in Foucault's sense because it is not 'what I did' and how I feel about it as much as 'what has been done to me' and how I feel about it. Thus it is

not the first person monologue such as that from a witness box or psychoanalyst's couch.¹ The difference here is similar to the difference that Watney (1986) draws between the confession and the assertion/affirmation in the context of homosexuality. In his article, Watney is responding to the argument made by Minson (1981) that 'coming out' is not as radical a political strategy as it may seem because it retains the notion that homosexuality is 'about' personality and personal identity and does not challenge heterosexual ideology and power structures. Watney argues that the 'confession' of homosexuality is a personal label implying some sort of essence whereas the assertion of one's identity as 'gay' in the way that term has been formed is to assert oneself as part of a political group with a unity of interests. These interests are formed in response to the actions of others, that is, those who have categorised homosexuality as 'perverse/sick/mad/queer/contagious and so on' (1986:19). The 'confession' of being gay, therefore, like the 'confession' of having been incestuously abused, is not a statement about oneself, about one's own truth, but rather it is about the position in which one has been placed due to the actions of another. The process to which Foucault draws attention is that of the one confessing inscribing sexual desire onto him or herself, thereby 'deploying' and accepting his or her sexuality. Insofar as speaking about incestuous abuse entails speaking about sexual desires, it is not the speaker's sexuality that is at the forefront of discussion, but the abuser's.

ii) Secondly, the feminist analyses are not based on listening to pleasure as are the confessions to which Foucault refers, but of listening to pain. It does not contribute to the 'great archive of the pleasures of sex' (1981:63). Instead, it contributes to the feminist archives of sexual abuse carried out against women.

iii) Thirdly, the relationship between the women telling her story and the woman listening is not comparable to that between the confessor and the court, nor the confessor and the therapist. Foucault states that the confession is a ritual that unfolds within a power relationship:

'One does not confess without the presence (or virtual presence) of a partner who is not simply the interlocutor but the authority who requires the confession, prescribes and appreciates it, and intervenes in order to judge, punish, forgive, console and reconcile; a ritual in which the truth is corroborated by the obstacles and resistances it has to surmount in order to be formulated ...'(1981:61-2)

¹ The interviewing and work that has been done with incest abusers may be another matter.

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It is probable that women survivors speak to feminist researchers or workers within some form of power relationship. The woman listening may be considered some one who will help, whom one has to 'please' in some way by telling the story. Of the list Foucault provides, the feminist listener may appreciate (the woman's courage) and console. However, this power relationship is not the one between analyst and analysand, nor accused and court because feminist workers and researchers would try to minimise the speakers discomfort and respect her not wishing to talk or to tell everything. Moreover, there is no 'expert' or interpreter of what the woman tells.

iv) Further, Foucault suggests that the confession has become an end in itself:

'finally, [confession is] a ritual in which the expression alone, independently of its external consequences, produces intrinsic modifications in the person who articulates it.'(1981:62).

A feminist perspective on talking about incestuous abuse would argue that simply the speaking of what has happened will not have therapeutic effects. Many children and adults have 'confessed' that they were abused as children. It seems that trying to combat child sexual abuse by telling children to tell someone may be ineffective, since children are already telling but they are not being effectively 'heard' (Kelly et al, 1991). The effects of talking about abuse depend upon whether or not one is heard and heard in a supportive way. Furthermore, feminist work does not regard the speaking about abuse to be effective in any simple sense. Creating community between women by sharing common experiences enables one to see 'sideways' (see Chapter Three) and know that you were not the only one. Through the telling within a feminist context, the abused becomes the 'incest survivor', with the positive connotations that has in feminist discourse. But the simple rehearsing of the abuse is not an empowering act independent of such a context. The critique of the family and of societal attitudes to sexual abuse ^{must} always receive simultaneous attention.

On this first point therefore, it seems safe to conclude that one could not assimilate feminism to the deployment of sexuality via the notion of confession. Although the incest survivors speak about their experiences, they are not 'confessing' in Foucault's sense. The second area to explore is the argument that feminist work on incestuous abuse has set in place a form of disciplinary power around the family.

It is true that feminism has highlighted the widespread and unsurprising nature of incestuous desires in men who live in our society. This argument on the widespread nature of incestuous desires (perhaps one should speak instead of sexual abusive desires) is a

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description which has arguably had the effect of putting into operation disciplinary agents around the family. Social workers, child psychologists, teachers, are alerted to the possibilities of incestuous abuse. In this way, feminism can be recognised as contributing to the operations of the deployment of sexuality around the family which Foucault locates as existing prior to feminist concerns about the family.

This gathering of agents of the deployment of sexuality need not be considered a bad thing. Feminists would not be perturbed at the thought that various workers are looking out for signs of incestuous abuse.

What feminism draws attention to is exactly that sexuality which Foucault did not, that is, 'normal' male sexuality (see Chapter Two). It is *women* who look out for the activities of *male* sexuality. Thus the feminist critique sets up a 'gaze for sexuality' not only around the family but within the family as well. Within the family, the gaze operates across the gender divide. In doing so, it acts as a critique of the family, and a critique of ways of speaking about the family as a unitary actor and harmonious site. However, if feminism has indeed made mothers watchful of the men in their families, it has placed a burden on women as the mother. The agents that operate around the family, moreover, can come to use and rely upon the mother as their agent within the family (as Donzelot, 1979, describes). Women within the family are the ones who have to be constantly alert for their children. Women may begin to feel that they should personally watch over their children, and disallow men, either partners or other men, to be alone with their children. Thus women become tied to their children in a protective mothering role that feminism has consistently challenged as oppressive and this role can be exploited by those agents of 'the social', making the mother responsible.

On this second point, therefore, it would seem that, as feminists would wish, feminism has been part of the movement to install watchful agents around the family. Insofar as feminism has set up this disciplinary gaze, it could be regarded as part of the 'deployment of sexuality'. Feminism has furthermore, set up a gaze within the family between women and men which is both radical in the sense that it draws attention to inequalities within the family and the abuses of men within families, but also conservative in keeping women ever watchful over their children. On these criteria, feminist work on incestuous abuse could be seen to work in line with Foucault's deployment of sexuality.

However, the feminist work on incest has one fundamental aspect which marks it out from the deployment of sexuality. This is the feminist stance on sexuality. Although feminist work is speaking about the family and about sexuality, and in theory would welcome the workers watching the family, it is challenging the basic notion that Foucault argues the deployment of sexuality works to deploy: the naturalness of 'sexuality'. Feminist work parallels Foucault's in its direct attack on the notion that there is a natural sexuality arising from the body. Male heterosexuality has been the particular target of feminist work. It has been deconstructed and illuminated as a discursively informed practice. At first blush, it might have seemed that feminism is a part of the deployment of sexuality. The discussion above suggests, however, that whilst the feminist work on incest can be seen to have been similar in some of its effects, it is sufficiently different from the discourses of Foucault's deployment of sexuality to question such an assimilation.

These differences are such that I would suggest that if feminist work on incest fits anywhere in Foucault's schema it has to be as a reverse discourse, a discourse which operates within but against the deployment of sexuality. At certain points and in certain recommendations or effects, feminist work may overlap with other forms of discourse with which it otherwise has little in common. In the case of incestuous abuse, feminist discourse has been taken up within circles (such as social work and the police) that operate more straightforwardly as agents of bio-power around the family. However, its challenges to the notion of the harmonious family and the notion of natural sexuality are central to the feminist discourse, and make its assimilation with the deployment of sexuality difficult. Rather, the fact that feminist work often operates against the agents of bio-power makes it more easily recognised as a 'reverse discourse'.

2. *Feminism and the Systems of Alliance.* In this section I consider how the feminist work on incest relates to those discourses which Foucault regards as connecting people via 'systems of alliance'. Feminist work on incest challenges the system of alliance to the extent that it challenges the notion of the incest prohibition. Furthermore, feminist analyses argue that discourses which Foucault would situate as part of the system of alliance, in which sex is merely for reproductive purposes, and blood connections between members of families dictates sexual practice, ignore the realities of sexual abuse both outside and within a family system. Feminist analyses would not therefore fit alongside these discourses and clearly do not function within the systems of alliance. However, considering the relationship between feminism and the systems of alliance does throw up of the question of the place of the incest prohibition in feminist work on incest.

As discussed in Chapter One, the work of Rubin (1975) gave the incest prohibition (as the rules of the exchange) an important role in the maintenance of male dominated societies. Feminist work in other areas, such as in psychoanalytic theorising has also engaged in debate about the incest prohibition. But feminist analyses of the commission of incestuous abuse has purposely not entered debates about the nature and extent of an incest prohibition. The widespread nature of incestuous abuse has been investigated within the discourse of violence against women and not within the sociological/anthropological discourse on the incest prohibition. Feminist analyses have argued that the widespread nature of incestuous abuse makes talk about the universality of the incest prohibition farcical. As Ward writes, incestuous abuse 'has been hidden from view by the resounding silence of the 'incest taboo''(1984:3). However, a careful reading of the feminist work on incest reveals that the incest prohibition has not been completely discarded. There are works within which some notion of an incest prohibition remains. Indeed, the status of 'the incest prohibition' appears as a troubled site in feminist work.

Feminist analyses of incestuous abuse have questioned the notion of an incest taboo: 'a true taboo is a true deterrent. Sexual abuse of child by parent, it would seem, then, is not taboo.'(Armstrong, 1978:9). Rush argued that 'there have never been firm taboos against the sexual use and abuse of children by adults, or against incest.'(1980:134). The real taboo, Armstrong suggested, is *talking* about incest. Armstrong's book was an attempt to do just that, and other feminist authors state that given the opportunity there were many women survivors who wished to speak about their abuse once the silence around incest was broken by their interest (Butler, 1978:3; Nelson, 1987:32-3). In her review of the effect of the 'speak outs' on incest, Armstrong highlights the fact that the breaking of the taboo on speaking is not enough on its own: 'people say to me at least we're talking about it now. Yes. But it was not our intention merely to start up a long conversation ... we hoped to raise change.'(1987:ix).

Brownmiller suggested that attempting such change encounters a firmer taboo that surrounds father's rights in the familial domain:

'the taboo against father-daughter rape is superseded by a stronger, possibly older taboo - that there shall be no outside interference in the absolute dictatorship of father-rule.'(1975:281).

Where the feminist analyses consider the 'incest prohibition' it is in light of the construction of father rule, that is, in light of the family as presently constituted. The two

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feminist texts on incestuous abuse which present extended discussion of the incest taboo argue that it has to be understood within such a context.

Herman starts from the statement that there is an universal incest taboo (1981:50), but asks why it is that father daughter incest (the particular form of incestuous abuse her book is about) is not as strongly prohibited as other forms of incest. She suggests that a family structure in which there is a traditional sexual division of labour between husband and wife teaches children to hold their father in awe and to regard their mothers as subordinate. Both children turn away from their mother and value what is associated with the father. Girl children learn to devalue themselves, and to fear and obey the father. Boy children, on the other hand, as well as learning that they will be the rulers of their own homes, learn 'to distrust and deny everything feminine in themselves. Their need for non-sexual physical intimacy and hunger for nurturance, expressiveness and tenderness cannot be acknowledged or gratified in the service of their development as 'real little men'.' (Herman, 1981:130). Herman argues that this situation creates the 'psychological conditions' favouring father daughter incest. Herman suggests that in this sense the incest taboo is not 'internalised' equally by boys and girls. Women learn to be nurturant mother figures but not to impose sexual desires, whereas boys learn to expect their demands, sexual and otherwise, to be serviced by women, especially those in their family.

Ward's (1984) argument is close to Herman's in that she too sees the incest prohibition as 'one sided' (1984:79), and the turning away from the mother as crucial. But Ward draws more explicitly upon psychoanalytic concepts, and particularly upon the object relations school as expressed in the work of Nancy Chodorow (1979) in her argument that it is mother daughter incest which is most strongly prohibited because it is the most threatening to the formation of new families and to men within the family. Ward argues that mothers have to psychically 'push' sons away so that they may turn to their father for gender training. Because mothers identify with daughters and the daughters 'have to' learn their gender training from the mother, on the other hand, the daughters are kept closer to the mother. This situation is potentially dangerous for the men in the family, argues Ward, because there is the possibility that the mother will form alliances with her children, squeezing the Father out of the family. Such a move would threaten not just that particular family, but the Family as an institution and male supremacy as a whole. Thus Ward argues

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'Father-Daughter incest (rape) does *not* threaten the 'male dominated family'; nor does Son-Mother incest (rape) when the Son is an adult since he is then male dominant instead of or as well as the Father. But Mother-Son or Mother-Daughter incest would threaten existing male supremacist forms because the Father would become comparatively irrelevant to the emotional fabric which determines the relationship within the family.'(1984:188).

Ward concludes that the incest taboo, as it operates on Mothers, causing them to psychically reject their children, is a means by which male dominance is maintained. She 'gives' her Son to the Father, and keeps her Daughter at a distance. The boy represses his emotional attachment to his mother, thereafter denying her original status for him, as well as his fear of his father, in order to enter the world of men (patriarchy). Whilst the Mother releases her children from her sensuousness, the Father welcomes his son into his world whilst preparing his Daughter for her 'sex object role' by treating her 'like a doll', by ignoring her, or by raping her (1984:192).

Ward's argument is that the incest taboo and the family are coterminous. As such, it is reminiscent of sociological functionalism, but her theory has a different trajectory. It is the Mother-Son taboo which results in the Son identifying with the Father and gives him the subconscious hatred of his Mother. Ward suggests that it is the frustrated desire together with the hatred which provide the ambivalence that is expressed in rape:

'The incest taboo is the family. The family is the incest taboo. (Without one the other would not exist). ... through severance from the Mother and the subordination of women, [it is ensured that] Sons will feel hatred (misogyny) and desire (rape) for their Mothers (all women). In thus creating misogynistic Sons, the incest taboo/family exists to ensure male supremacy.'(1984:192, original italics).

The work of Herman and Ward, therefore, does make a connection between the incest prohibition and a system of alliance. This alliance, however, is not the marriage/kinship system that revolves around blood, but a male supremacist system which revolves around power. The family system is reproduced not as an end in itself but as the site and vehicle of the male supremacist system. The incest prohibition is linked, as Rubin (1975) had linked it, with alliance between men. Ward's work also sees a 'gift' involved, as had Rubin, following Levi Strauss, but for Ward it is not women who are exchanged by men but boy children by women. In Ward's words, the most effective prohibition, the Mother-Son taboo, has the result that the Son is given to the Father by the Mother. Because of this rejection, the Sons despise and devalue their Mothers and, by extension, all women. Yet boys still feel an attraction to their first love object, the Mother/women. As in Freud and

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Parsons, they form families of their own based upon a heterosexual union and in which they are dominant. In the world of male adulthood, they are taught the rights men have over their family. Thus the cycle begins again. Although Mother Son or Mother Daughter incest would disrupt this process, Father Daughter rape does nothing to disrupt the cycle.

Considering the relation of feminist work to the system of alliance, therefore, it seems that, although feminist work would seem at first to be in direct opposition to an emphasis on the incest prohibition, it does have some analysis of its operations. It is the role of an incest prohibition on the mother's behaviour that has been the focus of this interest. It is only an incest prohibition on men's behaviour which has been attacked by the 'subjugated knowledge' of incest survivors. The theories of Herman and Ward in particular give the 'one-sided' incest prohibition a role in the reproduction of male dominated families and the family. These are the conditions, moreover, that foster and allow incestuous abuse to take place.

Without dwelling on whether these feminist theories are correct or not, I turn to the next section in order to ask what use the schema that Foucault draws up can be for a feminist analysis. In that context, one can begin to explore the feminist analyses in relation to other forms of knowledge about incest.

Making Use of Foucault's Schema

In this section I suggest that a feminist use of Foucault's schema around incest is useful to the extent that it provides a framework for organising ways of speaking about incest. Further, his work on incest, alongside his more general arguments, provides a context within which to rethink the feminist position on the incest prohibition. The feminist knowledge may then be reintegrated with the sociological/anthropological work on incest in the sense that these works can be placed within the same 'picture'. Thus I advocate a critical application of his schema.

Foucault's schema appears at first to divide ways of speaking about incest across a clear cut division. On the one hand, there are those ways of speaking which place incest (as an act which is prohibited) within a system of kinship ties and blood relationships (the system of alliances). On the other, there are those which speak of incest within a context of desire and bodily pleasures (the deployment of sexuality). One might begin

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therefore by 'sorting' the various ways of speaking about incest into one or other category. The sociological and anthropological accounts which have focused on the incest prohibition and exogamy go one way, the psychological accounts of incest offenders as sexually perverted, the social work discourses of the dangers of overcrowding, etc. go the other. However, this division soon begins to become more complex. As Foucault suggested, psychoanalysis is situated somewhere in between, concerned both with incestuous desire and with the family structure which underlies it. Feminism too, as I have suggested in the preceding section, is 'inbetween' not only because there has been interest in the incest prohibition, in the work of Rubin (1975) and through feminist interest in psychoanalysis, but because the work on incestuous abuse has its emphasis both on tracing the cultural construction of incestuous desire on the part of the abuser, and on the role of the one-sided incest prohibition in continuing a familial system in which men are dominant and incestuous abuse by an adult male is neither disruptive nor prohibited.

Perhaps then it is easier to redraw Foucault's dual system as a continuum of ways of speaking about incest. At one extreme, hypothetically, are those ways of speaking which deny or minimise the existence of incestuous desires and incest in any form and/or set up questions, with the symbol of blood, around the incest prohibition and kinship systems. At the other are those which with the symbol of desire, focus on the incestuous act and ignore any connections or implications that may have for the family and social structure. What incest is 'about' therefore becomes very different at different ends of the spectrum. In between these extremes are the ways of speaking about incest which make some gesture towards the other end, as well as those, such as psychoanalysis and feminism, which contain aspects of each.²

However, Foucault's argument is stronger than offering a template for organising ways of speaking about incest, because he suggests that the power/knowledge networks of the deployment of sexuality operate around the family such that they require the family, for the time being at least. In as much as they require the family, they require the

² It is worth remembering that Foucault did not suggest that there has been a progression from one end (the kinship/blood end) to the other. Although the incest prohibition is conservative in the sense that it tends to construct the family/kinship system both as functional and as desirable, it is articulated simultaneously with those discourses which focus on the incest act. Both exist contemporaneously. Neither are the later straightforwardly more 'progressive'. Although they recognise the occurrence of incest, these ways of talking can enter power networks, for example, by regarding offenders as sexually perverted in a way that avoids questioning the exercise of power within the family and along gender lines.

discourses which create and support it in its present form. The discourses which uphold the incest taboo, inasmuch as they uphold the family, also, therefore, uphold the discourses which explore its violation. In the above discussions, I have criticised Foucault's suggestion that the discourses of the deployment of sexuality 'incite' the act of incest as they gather around the family and discuss sexuality in the familial domain. Whilst the argument that these discourses create a discursive space for incest is persuasive, the argument that the commission of incest is incited by these discourses is not. More persuasive are feminist analyses which suggest that incestuous abuse is discursively incited, but by discourses which speak of and to male sexuality. But what of Foucault's suggestion that the discourses on sexuality in some sense 'need' the discourses on the prohibition and kinship in order to operate?

Butler (1990) has discussed the incest prohibition in relation to Foucault's *THS*. Her discussion, however, begins with Freud. Butler shows that in Freud's account the incest prohibition is dependent upon an earlier prohibition on homosexuality, supposing as it does that the child will be subconsciously attracted to the opposite sexed parent by the time the incest prohibition does its work. (Indeed, even where Freud speaks of the child's original bisexuality, he divides the child's sexuality into a masculine and feminine part such that bisexuality means not the coexistence of heterosexuality and homosexuality, but the coincidence of two heterosexualities in one psyche, 1990:61). Butler provides a Foucauldian critique of Freud's foundationalism, arguing that the notion that the child is originally bisexual in his sense of having both a masculine and a feminine predisposition, is an assumption that his discourse creates and sustains. She interprets the incest prohibition's operations as an enforcement of gender identity and heterosexuality. Butler elaborates the Oedipus complex as a process by which the lost love object is incorporated into the child's ego (or onto his/her body), as in Freud's description of melancholia (1923), such that the object, but also the corresponding gender and homosexual desire, is 'encrypted', given a 'space' within the child's ego ideal (super-ego). Both the opposite gender and homosexuality are internalised by the ego ideal as prohibited. Thus

'As a set of sanctions and taboos, the ego ideal regulates and determines masculine and feminine identification. Because identifications substitute for object relations, and identifications are the consequence of loss, gender identification is a kind of melancholia in which the sex of the prohibited object is internalised as a prohibition. This prohibition sanctions and regulates discrete gendered identity and the law of heterosexual desire ... Gender identity appears primarily to be the internalisation of a prohibition that proves to be formative of identity.'(1990:63).

Thus Butler is arguing that it is the incest prohibition which creates heterosexuality. In a sense, Butler's argument might be considered in agreement with Foucault to the extent that she argues that the 'deployment' of (hetero)sexuality requires the discourse of the incest prohibition.

The argument that the discourses of the deployment of sexuality 'need' the notion of the incest prohibition might also be applied to those psychological discourses on incestuous abuse which treat the abuser as sexually perverted. Whereas feminist analyses have regarded his abuse as in some ways in accordance with male sexuality (taking a younger partner, being aggressive, perhaps experiencing his sexual desires as requiring an outlet, etc.), these (predominantly psychological) discourses speak of the abuser as 'outside' normal sexuality. These discourses on the perversion of the abuser, although seemingly at one extreme of the continuum, can also be seen to need the notion of the incest prohibition. This is because it is the breaking of this prohibition that makes him 'perverted' (or perhaps, doubly perverted if the abused is young or of the 'wrong' sex). In this sense these discourses rely upon the notion of an incest prohibition, and maintain its existence in the face of evidence to the contrary.³

The relationship between the system of alliance and the deployment of sexuality, or the two ends of the continuum, is therefore one of tension. Foucault's thesis is concentrated on the operations of the later, and one of the main components of his argument is that sexuality as such does not exist: it is a discursive construction, a way of talking about our bodies. In *THS*, his comments on the system of alliance are more muted. However, as quoted above, Foucault did suggest later that the incest prohibition is a construction of those discourses which speak about it. He was referring to anthropological work on the incest prohibition, but presumably he would also include other discourses such as psychoanalytic discourse's use of the notion of the incest prohibition. In this final section of this chapter I want to suggest that feminist work take up this suggestion and explore its implications for their analyses of incestuous abuse.

A move in this direction has been made by Butler (1990). Having established the operations of 'the incest prohibition', as discussed above, Butler then moves to consider the

³ This argument is reminiscent of that of Miller (1990) who suggests that when the rhetoric of the harmonious family is threatened by a violent act, family members will reinterpret the violent member as in some sense 'outside' the family, declaring 'he's not the man I married', 'he's no son of mine', etc. (1990:275).

incest prohibition as a productive law. Butler notes that psychoanalysis has always regarded the incest prohibition as productive in the sense that it is productive of gender identity (1990:76-7)⁴, but her point is different. Butler argues that if one applies Foucault's critique of the repressive hypothesis to the incest prohibition, the latter can be seen to produce *both* sanctioned heterosexuality and transgressive homosexuality (1990:74). In her explication of how this might be the correct analysis of the incest prohibition, Butler argues that the taboo might be seen to create and sustain the desire for the mother/father as well as the 'compulsory displacement of that desire'(1990:76). But here she slips between the productivity of the incest prohibition and the productivity of the culture, via material child rearing arrangements:

'The notion of an 'original' sexuality forever repressed and forbidden thus becomes a production of the law which subsequently functions as its prohibition. If the mother is the original desire, and that may well be true for a wide range of late capitalist household dwellers, then that is a desire produced and prohibited within the terms of that cultural context. In other words, the law which prohibits that union is the selfsame law that invites it, and it is no longer possible to isolate the repressive from the productive functions of the juridical incest taboo.'(1990:76).

Butler seems to back away from her argument that the incest prohibition, as a part of psychoanalytic discourse, is a law which creates the desire that it is said to prohibit, when she refers to the 'cultural context' of mothering. She seems to resort to an argument that accepts and 'explains' the incestuous desire she wished to show as a discursive construction in terms of material living conditions. It is these which create incestuous desire.

Butler's argument seemed promising and exciting, but ultimately her conclusions are unsatisfactory, leaving an ambiguity around what she means by her statement that the incest prohibition both invites and prohibits incestuous unions. She argues both that the incest prohibition creates incestuous desires and that the culture creates incestuous desires. I suggest that Butler's dissatisfactory conclusion is a result of the fact that she remains curiously 'within' psychoanalytic discourse, placing a question mark over the production of incestuous desires, but without doing the same for the incest prohibition. Indeed, Butler states that her purpose is not to 'show that there are cultures in which the incest taboo does not operate'(1990:76), but to stress that the incest taboo is not merely prohibitive but

⁴ One might add that the work of other authors on the incest prohibition have seen it as productive. For example, Levi Strauss saw the incest prohibition as productive. For him, it resulted in exogamy which produced social interdependence, and culture itself.

productive, in its production of both gender and sexuality. 'In other words, not only does the taboo forbid and dictate sexuality in certain forms, but it inadvertently produces a variety of substitute desires and identities that are in no sense constrained in advance.' (Butler, 1990:76). Thus Butler regards incestuous desires as produced rather than given, although she waives, or does not explain the connection, between the incest prohibition and 'culture' as productive of these desires. But the incest taboo is only interrogated insofar as Butler contests its repressive nature.

I want to take a further step 'outside' psychoanalytic discourse in order to think about the status of both concepts 'incestuous desires' and 'the incest prohibition'. Butler begins to question the former, but for feminist work on incestuous abuse, the issue of the incest prohibition obviously needs to be interrogated as well. I want to question the Truth of the incest prohibition in relation to Foucault's arguments on the continuum of ways of speaking about incest, and in relation to feminist arguments about incestuous abuse, desire and the incest prohibition.

The first point to make is that many ways of speaking about the incest prohibition, including the theories on the origins of the incest prohibition, sociological accounts of the function of the incest prohibition, psychological accounts of incestuous abuse, etc. assume that there is such a thing as 'the incest prohibition'. Much anthropological work has begun to question the usefulness of the label 'the incest prohibition', arguing that perhaps not all writers on the incest prohibition are discussing the same range of phenomena (Goody, 1971). My argument, however, is not that the incest prohibition varies over cultures such that the term 'the incest prohibition' homogenises very different cultural systems. Rather, I am arguing that the very notion of an incest prohibition is highly problematic. The first point therefore, is that the existence and status of the incest prohibition is frequently taken for granted and assumed to be a fact of societies. Theories on the origin of the incest prohibition have frequently presupposed that which they are trying to explain, sociological theories assume that the incest prohibition exists (and, furthermore, that it is efficient) and psychological theories assume that an 'incest prohibition' has been traversed..

What I suggest, following Foucault, is that the incest prohibition is a discursive product, of academic and common sense ways of speaking that do not question its existence. That is, it is a discursive construction in the sense that it exists only to the extent that we speak about it. In a sense it is a truism to say that the incest prohibition exists only insofar

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as we speak about it. There is no object 'the incest prohibition' that we can pick up and handle. But this rather simple point reveals, quite uncontroversially, that 'the incest prohibition' is a descriptive term that purports to describe the workings of a social rule (and often, an universal rule). It is a label for an observation. This social rule is a label that describes certain forms of behaviour - incest avoidance - and certain attitudes - the 'horror of incest'. The point I am making here is that initially one has to understand 'the incest prohibition' not as what leads to incest avoidance and attitudes toward incest so much as a description of these phenomena. (Below, I shall revise this argument in order to argue that 'the incest prohibition' as a discursive construction can be seen as a sufficient but not necessary component in the production of incest avoidance and that attitudes toward incest are not evidence of the incest prohibition: they *are* the incest prohibition. But I leap ahead).

The second point to make is that many ways of speaking about incest also presuppose incestuous desires that have to be controlled. Psychoanalytic discourse is obviously the prime example of this point. Incestuous desires on the part of children toward their parents is a fundamental part of psychoanalytic theory. Indeed, where incestuous desires have been denied, as in Westermarck's (1921) thesis that the incest prohibition was a moral rule which followed rather than caused the avoidance of sexual relations between kin, the theory was widely dismissed. Westermarck suggested that there is a lack of erotic feelings between those who have lived closely together since childhood, and that this aversion then became custom and moral prohibition. He was criticised with the argument: if incest was avoided why would there need to be a prohibition? Such an argument illustrates how the incest prohibition was accepted as a fact prior to its explanation, my first point, above.

But Westermarck's reception also suggests that the existence of incestuous desires was widely accepted. At least among followers of Freud this would have been the case. Freud argued that Westermarck's hypothesis left no room for the emotions of the Oedipus complex and should be abandoned (Freud, 1950, quoted in Arens, 1987:71). Thus Freud takes his theory as based upon undisputable facts which Westermarck's theory cannot explain. To this, Westermarck replied that he saw no evidence of repressed desires to commit incest, that this was a 'supposition' rather than an 'unearthed fact' (in Arens, 1987:71). From my different angle, I want to argue that the incestuous desires of psychoanalytic theory are indeed suppositions, produced by its own discourse. The existence of incestuous

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wishes on the part of children and the existence of the incest prohibition are essential components of psychoanalytic theorising.

As I have argued above, where incestuous abuse or behaviour occurs, it has been understood in ways that do not challenge the existence of the incest prohibition. Incest has been regarded as sexually deviant, as the expression of a perverted sexual desire (eg. Gebhard et al, 1965, Barbaree and Marshall, 1989). In fact, the occurrence of incest has been regarded as both evidence of incestuous desires and, since relatively few cases occur, the strength of the incest prohibition (Lindzey, 1967)⁵. Even in some feminist writings on incestuous abuse, the status of the incest prohibition goes unchallenged (eg. Herman, 1981).

I am arguing that 'the incest prohibition' is created and sustained by discourses - anthropological, sociological, psychological, psychoanalytic and 'common sense' discourses - discourses at both ends of Foucault's continuum. It has become a Truth which is unchallenged and upon which several theories and writings rely. 'Beyond' the incest prohibition, furthermore, there is frequently (although not always) the notion of 'incestuous desires' which are also I suggest theoretical constructions that have taken on the status of Truth.

Where does this leave one? Are there no incestuous desires and no incest prohibition? In the rest of this section I want to argue that the notion of an incest prohibition has analytic power only if it is understood as a discursive construction. I want to consider the implications of this argument for the feminist position. The arguments advanced here take as their point of departure the rewriting of the feminist analyses of incestuous abuse that I presented in Chapter Three.

Feminist analyses have already made a move away from the notion of 'the incest prohibition'. As well as statements discussed above which suggest that the incest prohibition is not what it has been understood to be, the feminist work has in its theoretical arguments, refused the incest prohibition a place. That is, incestuous abuse is understood not as the traversing of a line licit/illicit but as actually informed by accepted discourses that are in themselves nothing to do with incest (but are to do with sexuality,

⁵ Lindzey also argues that incestuous desire would be the least remarkable of sexual attraction given the fact that people tend to choose people like themselves and family members would presumably share the most in common, a good example of incest being set up as an omnipresent danger in the family at the same time ^{as} the existence of a strong incest prohibition is upheld.

power and the family). In this, feminist analyses have made a direct challenge on the notion of the incest prohibition. However, as discussed above, the incest prohibition, in its various modified forms, still remains in several feminist texts. In my exploration I want to suspend belief in both an incest prohibition and incestuous desires. In doing so I am making a Foucauldian manoeuvre by implicitly posing myself the possibility that they do not exist in order to see what the mechanisms actually are. I wish to interrogate the Truths of the incest prohibition and incestuous desires using the feminist analyses as outlined in Chapter Three.

A fundamental argument in feminist analysis is that within the family power is exercised and knowledge is distributed in unequal ways. Lines of age and gender, whilst not necessarily fixing the exercise of power, are lines across which power is negotiated with certain predictability.⁶ The term 'incestuous desires' does not distinguish between the different positions within the family. 'Sexual desires towards a member of one's family', as a rough definition, does not distinguish between men and women, nor between adults and children. What happens to notions of incestuous desires and 'the incest prohibition' when one considers the different positions within the family?

For the child, psychoanalysis posits incestuous desires toward the parent(s) which the parents then frustrate in deference to an incest prohibition. Butler (1990) has suggested (above) that the child's desire for the mother may be the result of social structures which mean that in late capitalist societies, at least, children tend to spend their infancy with their mothers. This caretaker then becomes the only security the child has known. However, in what sense are these desires sexual? What counts as sexual? The child may have a desire for 'love, care, attention, and tenderness' (Miller, 1990:121) from the adults around him or her, and s/he may have a 'healthy and intense curiosity' (1990:122), but does s/he have an image of sexual stimulation or intercourse in mind? I would suggest that this is not the case, that children do not tend to have the knowledge by which to imagine sexual intercourse. A desire to be a sexual partner is not what attracts him/her to the adult. The term 'incestuous desires' conflates the child's *sensual* desire and desire to receive attention with the sexual desires of adulthood. Thus, I would argue that the child's desire for the parent/care taker does not amount to

⁶ I am referring here to my arguments on power in Chapter Three where it was agreed that power is not a possession, but it was also argued that its exercise can be perpetually asymmetrical and that the family is probably the prime example where although power is negotiated it remains 'perpetually asymmetrical along lines of both gender and age.

'incestuous desire' if incestuous is taken to mean sexual in the sense of sexual stimulation or intercourse.

It is the father's incestuous desires which have been the focus of most feminist work on incestuous abuse. In Chapter Three I discussed the feminist arguments around male sexuality, and the Father's exercise of power within the family. In feminist analyses, the Father is understood as positioned within discourses of sexuality and the family that are in themselves unconcerned with incestuous abuse but which render the abuse 'intelligible' or, as I have argued above, render it unsurprising. The Father's incestuous desires are understood therefore as informed and condoned by accepted, indeed traditional, discourses. This argument does not mean that all Fathers have incestuous desires. The discourses which inform the abusing Father's behaviour do not have to produce abusing Fathers. The complexity of discourses by which individuals 'turn themselves into subjects' and the many paths by which an individual's negotiates his or her way through those discourses means that any such conclusion would be simplistic. Nevertheless, the feminist analyses have convincingly argued that it is the Father's position, a potential position, that any 'incitement to incest' surrounds. The Father's incestuous desires are culturally informed at the intersection of a number of discourses.

However, on closer inspection it is clear that the feminist argument is that these desires are not necessarily incestuous. They are not necessarily incestuous in two senses. First, they are desires that are focused on family members, most frequently on girl-children, not because they are family members but for other reasons such as the fact that these people are the closest to hand, because the Father has some authority over these people, because he may feel he has some 'right' to them, etc. In this way the feminist analyses have taken the Father's abuse 'outside' the family. In other words to say they are incestuous is to label this desire incestuous in a way that regards the desire as always already tied to the object of attraction. Secondly, the Father's 'incestuous desires' may not be incestuous because they may not ^{be} about sexual gratification. Some of the feminist analyses argue that incestuous abuse is about power in this sense, although most now argue that power and male sexuality are so entwined that incestuous abuse is both sexual and about power (see Chapter Three, and Bell, 1991, bound here as Appendix III).

When men do not abuse their children, is this evidence of an incest prohibition? From the perspective being argued here, it is not. Or, at least, it may not be. Men's understanding of their sexuality, masculinity, role in the family, fatherhood, are

informed by discourses of the culture in which they live. The feminist analyses have argued that these discourses render incestuous abuse unsurprising. But since the position of the abusing Father is only ever a potential subject position, one way of 'negotiating' the discourses on male sexuality and the family, it is not inevitable that all men will fill this position, and there are also subject positions in which men may not feel incestuous desires. If this is the case, some men have no need for the intervention of an incest prohibition. The point is that the notion that an incest prohibition is 'at work' on every individual parent's behaviour presupposes the existence of incestuous desires: the incest prohibition is either traversed or obeyed. However, incestuous abuse is not 'about' the breaking of the incest prohibition. My argument is that feminist analysis can theorise (and to some extent has theorised) the occurrence of incestuous behaviour as well as its avoidance without need to posit the existence of 'an incest prohibition'.

It is not contradictory to add that the 'prohibition of incest' as a discursive phenomena may still be relevant both when men do not abuse members of their family (or do not engage in incestuous romantic relationships, for that matter) and when they do. These behaviours *may* be in response to an incest prohibition. That the prohibition is a discursive construction does not mean that it cannot have the effect of informing incest avoidance. When aware of their incestuous desires, it is consistent with this position that men may not act upon them in deference to an incest prohibition. I would argue that as a deterrent, the incest prohibition functions by making people consider the reaction their behaviour would receive. The imagined reaction may be somebody's reaction in particular, people's reaction in general, or the law's response. Finkelhor (1984) and Russell (1984) have argued that there are certain factors that may prevent sexual abuse occurring. The incest prohibition may be one of these factors in the sense that the actor poses himself the question 'what would people say?'. (This anticipated response may also prevent consensual incest, although in this case, the couple have the powerful discourse of romantic love in which to understand and present their behaviour). On the other hand, MacKinnon (1982) has argued that the prohibition or illegality of acts can be 'part of their excitement potential'. If this is the case, then the 'prohibition of incest' as a discursive phenomena may also be involved in the commission of incestuous abuse. This is a form of Butler's argument that the incest prohibition creates that which it is said to prohibit. If MacKinnon is correct 'the incest prohibition' acts as an incitement in the form that the man asks himself 'what would people say if they knew I was doing this/had done that?' The thought of their negative response may excite him, make him feel powerful or in Cameron and Fraser's analysis, make him feel 'transcendent' because he

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feels he no longer needs to obey the rules of society. If this is correct, it is by the anticipation of 'other people's' talk that the incest prohibition functions. Indeed, I would suggest, their response is the incest taboo. This is the only sense in which 'the incest taboo' is meaningful.

As I've noted above, the retention of the notion of 'the incest taboo' in feminist work has been principally to explain the *mother's* behaviour. Again, however, to explain their behaviour as an act of deference to an incest prohibition is to presuppose incestuous desires. What mothers do may be described as 'incest avoidance', but the very suggestion that incest is avoided implies that incestuous desires were felt and that they were refused. The feminist analyses suggest that mothers do not sexually abuse their children for a variety of 'reasons': because they are the carers of children, they tend to be closer to children, to know them as individuals with their own desires, to respect those desires, because female sexuality is not focused on younger people, nor on being demanding and predatory as is men's. In short, they tend to lead lives in which they relate to children as subjects rather than as objects. It is not that women sexually abusing is impossible: this is clearly not the case from the (very small numbers) of women who have done so. But in terms of the construction of female sexuality, motherhood, and the family, it is more surprising. In short, incestuous behaviour on the part of the mother is not discursively incited.

In the case of a woman considering an incestuous act (whether abusive or a consensual relationship), however, it may, as in the case for a man, make sense to speak about an incest prohibition. Again, it would take the form of considering what others would say about the act they were about to commit. This reaction is the incest prohibition. When such a thought is entertained and the act is not taken as a result, then one can meaningfully speak of 'incest avoidance'. But the incest prohibition can also be ignored: the moment of incestuous abuse that has been the subject of much of this thesis, is the moment when the incest prohibition is revealed as 'merely' discursive, a way of speaking.

In this last section I have been arguing that it only makes sense for feminism to use the notion of 'the incest prohibition' when it is understood as the discursive construction of several discourses, and not as a Truth which stands rigidly in place in each and everybody's lives. Moreover, I have suggested that the notion of the incest prohibition presupposes the existence of incestuous desires, thereby conflating sensual desire of children with all other forms of 'sexual' desire, and failing to consider the social context

and cultural creation of sexual desires. The feminist analyses of incestuous abuse have not taken their critique of the incest prohibition as far as I have here, but it is on the basis of their work, via Butler (1990) and Foucault (1981), that my argument rests: the incest prohibition exists only to the extent that we talk about it but, more accurately, the incest prohibition exists only in the sense that we talk about incest as prohibited, undesirable behaviour.

Conclusion

In this chapter I have drawn attention to a previously unexplored part of Foucault's argument in *THS*. Foucault's on comments on incest have been shown to be pivotal in the sense that incest is placed 'between' the systems of alliance and the deployment of sexuality. Through my explorations of these passages I have drawn out to my mind the most useful and provocative aspects of Foucault's arguments, considering their bearing on feminism from both 'within' and 'outside' the schema he presents. Foucault's condensed arguments on the place of incest contain some ambiguities which mean that their exploration has required a certain amount of interpretation. I have argued that the use of Foucault's work on incest is twofold.

First, it has provided a way of thinking about how incest is spoken about. I have suggested that Foucault's argument that incest is spoken about either in relation to the system of alliance or within the sexual dangers discourses of the deployment of sexuality incest is better conceptualised as a continuum between these two ways. Secondly, it has provided some stimulation to rethink the place of 'the incest prohibition' and 'incestuous desires' in feminist work. I have argued that the concept of 'incestuous desires' is a redundant concept in the sense that its undifferentiated nature conceals very different processes. I have suggested furthermore, that 'the incest prohibition' can only have analytic power for feminism if it is understood as a discursive phenomenon that exists only insofar as we speak about it.

One place where the incest prohibition is discursively maintained is in criminal law. There, in stark form of thou shalt not, the juridico-discursive power of the incest prohibition is found. It is to the question of incest law that this thesis now turns.

PART TWO:

The Law of Incest

Chapter Five

The Law and Incest

From this chapter onwards, this thesis turns to the field of law in an investigation of both Scots and English criminal law on incest. There are several reasons for turning to law. As I mentioned at the end of Chapter Four, incest law is a clear and powerful statement of the incest prohibition in the juridico-discursive mode. From this point of view it is interesting to ask how the law was constituted. Further, law has been a site of feminist activity and the passage of the 1908 Punishment of Incest Act, has been heralded as a success for feminist activity. From this point of view it is interesting to investigate a law which deals with a subject that has received much feminist attention. Importantly, the theorising of law from a feminist perspective has already been influenced by the work of Michel Foucault. In particular, it has been argued that feminist investigations of law approach the law as a discourse, a site at which power/knowledges meet. As I will discuss below, this argument forms the point of departure for my investigations into incest law. Before introducing this perspective on law and its relationship with previous feminist conceptions of law, I will introduce the incest statutes as they presently stand in English and Scots law, and raise a central question for the remainder of this thesis: 'what does the law regard incest as 'about'?' I will also introduce the debates on incest which have shaped the present law and which are explored in some detail in the following chapters (Six and Seven).

The Present Law on Incest

English law and Scots law differ in their provisions. In this section I give a brief summary of the present law on incest.

English law on incest is contained in Sections 10 and 11 of the Sexual Offences Act 1956 (see Appendix I). The crime of incest is constituted as follows. For a man over the age of fourteen, it is an offence to have sexual intercourse with a woman whom he knows to be his grand-daughter, daughter, sister or mother. The term 'sister' includes half-sister, and all the relationships hold whether or not they are traced through marriage. For a woman over the age of sixteen, it is an offence to permit a man whom she knows to be her grandfather, father, brother or son to have sexual intercourse with her by her consent. The term 'brother' includes 'half-brother', and all the relationships apply even if they are not traced through marriage. The onus is on the prosecution to prove the existence of the relationship, and the accused's knowledge of it at the time of the offence. The consent of both parties is no defence.

In Scots law, by the 1986 Incest and related Offences (Scotland) Act, more relationships are punishable as incest than in English law (see Appendix I). For a man it is an offence to have sexual intercourse with his mother, daughter, grandmother, grand-daughter, sister, aunt, niece, great grandmother, great grand-daughter. For a woman it is an offence to have sexual intercourse with her father, son, grandfather, grandson, brother, uncle, nephew, great grandfather, great grandson. Sexual intercourse within all of these relationships is punishable as incest whether or not the relationship is of full or 'half-blood', and whether or not it is traced through marriage. Sexual intercourse within some relationships by adoption is also punishable as incest. For a man, adoptive mother or former adoptive mother, adopted daughter or former adoptive daughter. For a woman, adoptive father or former adoptive father, adopted son or former adopted son. There are also two 'related offences'. The first states that it is an offence for a step parent or former step parent to have sexual intercourse with a step child or former step child unless the latter is over twenty-one years of age or had never lived as a child of the family before the age of eighteen. The second states that any one who has sexual intercourse with a child under the age of sixteen who is also a member of the same household and is in a position of trust and authority in relation to the child is committing an offence. As with English law, the Crown has only to prove that the relationship existed and that the accused knew of it. Consent is not a defence.

What is Incest About?

In this section, I want just to raise the question 'what does the law regard incest as 'about'?' In raising such a question I mean to draw attention to the process of law creation which is to be studied in some detail in the following two chapters. One way to do this is to consider how far the laws reflect the feminist understanding of incest which has been the preoccupation of this thesis up to this point.

From the summary of present law on incest discussed above it will be clear that the law does not present a feminist understanding of what incest is 'about'. By both laws,

- i) incest is a heterosexual offence in the sense that it can only involve a man and a woman.
- ii) only penetration of the vagina by the penis constitutes incest.
- iii) the consent of both parties is not a defence.

On the issue of which acts to include as incest, feminists would argue that many acts other than penetration of the vagina by the penis are abusive and experienced as such by those that survive them. Thus, although these acts might be punishable under other sections of the Sexual Offences Act (in England and Wales) or other laws, feminists would include them under their remit when discussing incest. On the issue of only heterosexual relationships being punishable as incest, feminists would argue that, although most incestuous abuse does seem to take place between a man and a girlchild, the abuse of boys by men (and even of girls by women for the sake of completeness) can also be just as damaging and is just as 'serious' as incestuous abuse between a male and a female. Thus the law's restriction to heterosexual offences does not reflect a feminist understanding of incest. On the issue of consent, feminist analyses have regarded consensual incest between adults as a non-problem, arguing that it is non-consensual acts which are the more frequent and which are the issue to be addressed. Where the case involves children, however, the feminist analyses are rather like law in their argument that consent is not a helpful concept since a child does not have the knowledge to consent, an adult's sexual intercourse with a child is (always) abusive.

What about the relationships in which sexual intercourse is defined as incest. The relationships punished by English law seem particularly limited in scope (uncle/niece and aunt/nephew, for example, are not included). The stress on biological

relationships, moreover, especially clear in the English law, point to an understanding that is in opposition to the feminist emphasis that it is not the blood relationship which makes the abuse incestuous but the relationship between the two, usually linked in some way to a notion of the household, but understood in such a way that other relationships such as mother's friends, trusted adults and those who live as part of the family are included. The inclusion of relationships of trust and authority in the 1986 Act are closer to the feminist position in this respect.

On many points, therefore, the laws do not reflect a feminist agenda. This is not the same as saying that feminism has not been influential in the passage of these Acts. Both the 1908 Act which was incorporated into the 1956 Act and the 1986 Act were discussed and passed during periods of feminist activity on the subject of incest (see the discussion of Jeffreys (1985) work on the earlier period below). It would seem safe to conclude that feminism has been influential in the 'discovery' of incest as a social problem in both periods, and therefore in bringing the discussion of incest onto the agenda of parliamentary discussion and law review/creation. However, any such activity has not been translated into a feminist-guided law. So which or whose agenda is the law following here? What does the law see incest as 'about'?

In the following chapters, I explore this question by tracing the process of law creation. I do not trace it back to its very inception, to the campaigns and pressures which led to the presentation of Bills before the Houses of Parliament. Rather I trace the ways in which incest was spoken about in the parliamentary debates which led to the passage of these Acts (the 1908 and the 1986 Acts). In the following section I introduce the debates and mention some of the other commentaries which have been made upon them, before turning in the next to discuss feminist approaches to the law.

Introducing The Incest Debates

The following chapters will look at the parliamentary debates that addressed the place of incest in both English and Scots criminal law (See 'List of Debates'). The first group of debates took place at the beginning of the twentieth century and addressed the proposed criminalisation of incest in English law. These debates eventually led to the 1908 Punishment of Incest Act. The second group took place in the 1980s and were addressed to the revision of Scots law on incest. These debates led to the 1986 Incest and

Related Offences (Scotland) Act. The debates^{were} chosen because they are ones which were addressed *solely* to the offence of incest and which were concerned with deciding what legislation on incest should look like¹. These are two periods in which the place of incest in law was discussed comprehensively and at length. Although it is interesting to note the similarities and the differences between the ways in which incest was spoken about in the two periods, the debates have *not* been chosen to form an historical contrast that would permit the drawing of a trajectory between them. They have been chosen because these are the debates which have shaped our present law on incest. In order to give a context to the debates, I will give a brief history of the law on incest in Scotland and England and Wales.

English Law On Incest.

Until 1857 incest was, in England, an offence punished only by the Church². There was no offence of incest in criminal law. According to Bailey and Blackburn,

‘Incestuous marriages were declared null and void, whilst most sinners were forced to do penance either by public confession in the parish church or market place (in bare feet, clothed in a white sheet and clutching a white wand) or by a payment of money.’ (1979:708, drawing on, *inter alia*, Hair, P., 1972 and Emmison, F. G., 1973).

The Matrimonial Causes Act of 1857 took away the power of the church to judge and punish matrimonial cases. This included incest cases, but incest was not simultaneously written into criminal law. Thus incest was left unpunishable by either Church or law³ (Wolfram, 1983). By the turn of the century, however, efforts were being made to change this situation. The 1908 Punishment of Incest Act was preceded by several abortive attempts (in 1899, 1903 and 1907) to pass such a Bill. 1903 was the only time, aside 1908, that the Bill was discussed at length. The 1903 debates together with those of 1908 are the ones that will be discussed in this thesis⁴. The 1908 Act, in the form in which it was

¹ The debates preceding the 1956 Act did not discuss incest solely nor at length nor did they discuss the details of the provisions.

² Except for the period 1650-1661 when the Puritan Commonwealth made incest punishable by death. Apparently, however, the Act of 1650 was largely a ‘dead letter’ (Bailey and Blackburn, 1979).

³ Although in the 1857 Act ‘incestuous adultery’ on the part of one’s spouse was one of the grounds on which one could file a divorce.

⁴ All to be found in Parliamentary Papers. See ‘List of Debates’.

eventually passed, made it a crime for a man to have sexual intercourse with his granddaughter, daughter, sister or mother, and for a woman of or over the age of 16 to have sexual intercourse with her grandfather, father, brother, or son. The terms brother and sister included half brother and half sister, and included relationships which were not traced through marriage (See Appendix I). Since 1908, the Act has become incorporated into the 1956 Sexual Offences Act as discussed above.

The passage of the 1908 Act has been the site of some scholarly debate. Bailey and Blackburn (1979) have argued that it should be regarded as the eventual victory of the values of the social purity movement of the time. They argue that it was not, as one might believe, the result of contemporary eugenic arguments that inbreeding increased the risk of genetic malformations in any offspring. Eugenic arguments against incest were barely mentioned in the debates and where they were, there was no medical or statistical evidence. Bailey and Blackburn suggest that this was because there was not a great volume of literature at the time to support these arguments (1979:716-7). Bailey and Blackburn argue that the Act's success was due to the work of the National Vigilance Association (NVA), in conjunction with the National Society for the Prevention of Cruelty to Children (NSPCC), who managed to persuade the Home Office to support the Bill through the argument that such legislation was necessary to prosecute those involved in the 'domestic victimisation of children' (1979:712). The Home Office support was, they suggest, crucial to the passage of the Bill.

Thus Bailey and Blackburn argue

'The Act must be seen ... as a product of a distinct social movement which combined preventive work in the cause of child protection with a demand for moral purity. ... The Act reflected the increased readiness to protect the interests of children through law. ... The Punishment of Incest Act 1908 was a public affirmation of the moral values associated with reactionary vigilance work on the behalf of social purity ... [It was] a manifestation of the strength and status of the social purity movement.' (1979:717-8).

Wolfram (1983) has suggested that any failure to give medical or statistical evidence with regard to arguments on the deleterious effects of inbreeding cannot be explained with reference to a lack of studies. There were in fact several such studies, argues Wolfram, as evidenced by the impressive bibliography of Huth's (1875) The Marriage of Near Kin: Considered with respect to the laws of nations, the results of experience and the teachings of Biology. Wolfram suggests these arguments did not

feature in the debates for other reasons . First, there was little agreement around whether or not there was an increased risk of genetic malformations in offspring. There were those who disagreed (such as Huth, 1875). Secondly, the controversy that had surrounded the Marriage with a Deceased Wife's Sister Act (by which a man was no longer forbidden to marry his ^{dead} wife's sister) had been laid to rest with the passage of that Act in 1907. Opposition to the 1907 act had been strong because it was argued that it would herald the beginning of the end of affinity as a bar to marriage. By 1908, Wolfram suggests,

'it may have been felt that the maintenance of restrictions on affines was a lost cause and/or that the liberalisation of marriage within the prohibited degrees should be compensated by the reintroduction of some more stringent control over at least some incestuous conduct.'(1983:313).

A third commentary on the Act is that of Sheila Jeffreys (1985). Jeffreys presents the Act as a success for feminist campaigning around the issue of child sexual abuse at that time. Jeffreys investigates the role that feminism played in the social purity movement in which the National Vigilance Association, mentioned by Bailey and Blackburn, was centrally important. Before 1900, Jeffreys argues, women of the purity movement were feminists who 'set themselves straightforwardly to the task of getting men to control themselves.'(1985:24). After 1900 there were more social purity movements which did not contain feminist ideas or personnel, as well as more specifically feminist organisations. But up until this time, feminists (alongside men and women who were not self-consciously feminist) were active in the campaigning of the social purity organisations, particularly in campaigning around sexual abuse.

During the period 1880-1900 incest was presented as a social problem in official settings on several occasions (Wohl, 1978). In particular, the Royal Commission on the Housing of the Working Classes (1884-5) is noteworthy for its reports of the occurrence of incest among the working classes. Here and elsewhere, incest was understood as the result of over crowded living conditions (Wohl, 1978). Beatrice Webb, in her work with the poor, was horrified at the number of girls who were having children by their fathers and other relatives (Jeffreys, 1985). In 1868 Rev. Mearns stated in The Bitter Cry of Outcast London that 'incest is common' and in 1890, Booth of the Salvation Army reported in In Darkest England and the Way Out (1890) that the NSPCC (founded in 1889) and the NVA were prosecuting 'a fabulous number of fathers' for 'unnatural sins with their children'(Both quoted in Wohl, 1978). The 1885 Criminal Law Amendment

Act meant that these organisations could deal with incestuous abuse either as the offence of having sexual intercourse with a girl under 16 years of age, or the indecent assault of a girl under 13. But prosecutions for incestuous abuse were difficult because the consent of the parents was needed before a medical examination could take place, and there was also a time limit of three months within which the offence had to be reported. If the girl was over 16 no charge could be brought.

Jeffreys argues that the feminist involvement in the associations and campaigns which sought to challenge sexual abuses, has not been acknowledged.⁵ These associations tend to be depicted as simply 'anti-sex'. Jeffreys charts the feminist concern with child sexual abuse, which, she suggests, arose out of the campaigning for the abolition of the Contagious Diseases Acts of the 1860s which had given the police powers to stop and examine any woman they suspected of being a prostitute for signs of venereal disease in certain garrison towns and seaports (see Walkowitz, 1980, for a detailed examination of these Acts and the campaigns). After their repeal and the 1885 Criminal Law Amendment Act, feminists within the movement began to turn their attention to challenging the prostitution and sexual abuse of younger girls through seeking protection for young girls, criticising official responses to such offences and asking for practical measures (such as women police officers to deal with sexual offence cases, women-only railway carriages) alongside adequate legalisation. Such legislation would extend the time limit, abolish the 'reasonable cause to believe' clause by which a man could argue he thought the girl was of age, punish men who abused their authority more severely, make children's evidence more admissible in court and make it easier to charge a man with sexual assault by raising the age of consent to certain sexual activities to 16, in line with the age of consent to sexual intercourse for a girl. In light of the cases coming to their attention, a clause providing for the punishment of incest was also demanded. A draft Bill detailing all the changes demanded, first drawn up in 1892, was unsuccessfully introduced to the House of Commons on a number of occasions. When it became clear that the criminalisation of incest was not meeting as much opposition as the other clauses a separate Incest Bill was

⁵ Jeffreys is correct that writers on the purity movement such as Bristow (1977) have not mentioned the feminism of the women involved in social purity. Bristow presents these women's involvement biographically so that Josephine Butler's work becomes an attempt to 'save the daughters' after her five year old daughter died in an accident (1977:80), and Ellice Hopkins' work a 'tribute' to a close male friend 'who sympathised so with the plight of the prostitute and all women that he is said to have died of a broken heart.' (1977:95).

drawn up. It was this Bill which became the 1908 Punishment of Incest Act. In her study on the campaigns of these times, therefore, Jeffreys presents the 1908 Incest Act as an achievement of a purity movement within which feminists and feminist ideas were active.

The questions that these commentaries have set up around these debates are therefore questions of the *causation* and *timing* of the debates. In the following chapters, my questions differ from these commentaries in that they are not concerned with the cause (a 'why?' question), nor with the timing (a 'when?' question), but, instead, with the *way* in which incest was debated (a 'how?' question). Through an analysis of the debates, this thesis considers the way that law has constructed the meaning of incest that continues to underlie the criminalisation of incest.

Scots Law On Incest

Incest has been a crime in Scots law since 1567. The Act of 1567 was based on the relevant passages in Leviticus. Until 1986, the courts had to interpret the now archaic language of the Act (See Appendix I). The 1986 Incest and Related Offences Act was a revision of the status of incest law in Scotland. The details of the Act have been summarised above. Because the debates on Scots law often touch upon the relationship of this crime to other sexual offences, the offences under which acts of incest could also be punished in Scotland are summarised in Appendix II. The work of the Scottish Law Commission (Memorandum 1980 and Report 1981) will also be explored in the following chapters because the Bill that was presented to the Houses was taken directly from their Report.

Commentaries on the 1980s debates include the brief remarks of Mason (1981), who notes, amongst other things, the importance placed on genetic arguments against incest in the Scottish Law Commission's Memorandum, arguments that Mason describes as 'irrelevant' to legislating against incest (1981:303) because he suggests the risk of procreation is not and never has been part of the crime of incest.⁶ Wasoff (1981) also argues that the Scottish Law Commission consider irrelevant arguments. Illustrating

⁶ This sort of objection has also been made of the 1908 Act. Morton (1988) suggests that the 1908 Act was never 'relevant'. The criminalisation of incest was, he suggests, the work of a moral crusade of that time, and should no longer be kept on the statute books. Following a feminist understanding, and the legal position in Sweden, Denmark and France, he suggests that the real issue is 'abuse of authority'.

the clash between a feminist perspective on incest with other perspectives on what is wrong with incest, Wasoff suggests that

'If ... they [the Scottish Law Commission] had used the existing research on psychological effects of incest together with their own data [on the cases that have been dealt with by police and courts in recent years], they would probably have seen that the expressed problem is one of sexual exploitation of a child by a person responsible for her care and nurturance. Then the artificial distinctions between types of sexual exploitation or types of legal or blood relationships would disappear and the real objective of providing a caring environment for the young, free of sexual or other harassment could have been approached.' (1981:115).

These two criticisms of the Scottish Law Commission's Memorandum address the question of which agenda the law follows. Or, to put it another way, 'what is wrong with incest according to the law?' The remainder of this thesis explores the debates on incest in order to study how different perspectives on what incest is about and what is wrong with incest contribute or do not contribute to the process by which incest is produced as a specific crime. In this task, I draw upon the discussions of Part One, linking back to the feminist analyses of incest and the work of Foucault. I am also entering into debates on how feminists should theorise the law. Before clarifying my approach, therefore, the following section introduces the feminist analyses of law which form a context for my discussions.

Feminist Analyses of Law

Identifying the literature that would properly be included under the title 'feminist analyses of law' is not unproblematic. There is now a substantial body of work on women and law, by women on law and on legal issues of concern to women. This section will consider only texts that have theorised the law as a whole. In doing so, it follows the typology advocated by Naffine (1990), which splits this literature into three strands, roughly corresponding to three phases in the development of feminist analyses of law⁷.

⁷ This is by no means the only way of organising the literature. For a slightly different organisation see eg. Bottomley et al (1987) or Lacey (1989).

The first phase is a feminist critique which illustrates the bias in law. Bias is attributed to the monopoly that men have over the processes of law, law creation and legal practice. Bias is theorised as a way male dominance over women is preserved. The notion that law is impartial and proceeds according to logic is attacked by highlighting the ways in which law has worked against women and to the benefit of men. This first phase of feminist scholarship on law is summarised by Naffine thus:

'the focus is on women's struggle to achieve equality within the present system in the face of specific male efforts to preserve male dominance both within the legal profession and in the general public sphere. In the first phase, the principle concern is with how the male personnel of law have operated upon sexist principles to the detriment of women. The feminist challenge is directed specifically to the legal claim of fairness and impartiality in relation to law's dealings with women. The argument is that the men of law have been blatant in their male bias: they have specifically endeavoured to preserve their own power and to keep women in their place.'(Naffine, 1990:2).

The two most influential books identified as belonging to this phase are those by Sachs and Wilson (1978) Sexism and the Law and by Atkins and Hoggett (1984) Women and the Law. The first of these was a landmark in feminist work on law, and provides detailed analyses of the legal status of women in both Britain and the United States of America from the 1850s onwards. The second considers the contemporary treatment of women by the law in Britain. For my purposes here, which is to contrast the theoretical positions between the three approaches, it will suffice to consider only one of these texts, that of Sachs and Wilson (1978).

Sachs and Wilson (1978) illustrate the ways in which women's efforts to gain equality with men by entering professional and public life have been resisted by the men of the legal profession. The male monopoly cases in Britain, which considered the question of whether women were included in the term 'persons' used in statutes, are analysed by Sachs and Wilson in relation to women's battles to be granted equal status in various realms including the registration of doctors, qualification for jury and entry into the legal profession. For example, the case in which women demanded to be allowed to graduate from Edinburgh Medical School and thus enter the medical profession is analysed by Sachs and Wilson because it dealt, indirectly, with the question of whether women were legally 'persons'. The judges, by a majority decision, rejected the claims of

the women medical students, and their exclusion from medical studies, even in segregated classes was upheld (1978:16).⁸

The problem as Sachs and Wilson depict it, is that there is a male monopoly over law (Naffine, 1990:4). The men who have been in a position to improve the position of women have worked in opposition to such social change. Sachs and Wilson explain this reticence by reference to the shared 'male ideology' of the judges, using the term ideology to mean 'some systematic world view that describes, explains and justifies a particular form of social ordering'(1978:51). The decisions of judges are therefore ones that accord with their beliefs, their ideology:

'we may accept that judges, like other people, are moved more by what they believe than by what they know. Shared beliefs shape reality and explain phenomena, and depend for their credibility not on empirical verification but on antiquity and reiteration. Their tenacity is attributable to the manner in which they serve social needs and not to their capacity to reveal social truths. If an individual's consciousness is at variance with demonstrable reality, he is called mad and locked up. If, however, a whole group shares a distorted consciousness, they attribute to their consciousness a special virtue and elevate it to a region above ordinary experience.'(1978:51).

Sachs and Wilson have been criticised by other feminist writers in this area. It has been argued that by concentrating on the sexist attitudes of those who operate the legal system there is little room for the development of a critique of the more structural aspects of the law and legal system (Bottomley et al 1987). That the law may be effecting the oppression of women in areas that are not explicitly concerned with women's status or lives is unaddressed by the attention to explicit areas of sexism and bias. This criticism, therefore, is that a feminist analysis of law cannot theorise the law as simply tainted by sexism in certain areas: it has to be more than a critique of instances of the lack of impartiality in areas that deal directly with women.

Sachs and Wilson have been further criticised for presenting a critique of law's partiality, as if impartiality were both possible and desirable. The very notion that

⁸ Sachs and Wilson (1978) go on to consider the corresponding position of women as 'citizens' in the U.S.A., to look at family law in both Britain and the U.S.A., and to explore the current position of women wanting to enter the legal profession and the difficulties experienced by women legal professionals.

impartiality is possible has been widely criticised⁹ for its assumption that it is possible for a member of society to be uninfluenced by that membership¹⁰. By establishing their critique on the lack of impartiality of legal personnel, Sachs and Wilson lay themselves open to the criticism that absolute neutrality is an unachievable state. Furthermore, as Elizabeth Kingdom notes, upholding the argument of impartiality as *desirable* means that it becomes difficult to raise the issue of positive discrimination or special needs (1980:86) which feminists may want to support, and which Sachs and Wilson themselves would seem to advocate 'to overcome the shameful discrimination of the past'(1978:186).

In her review of Sachs and Wilson, Kingdom notes that the argument made in Sexism and the Law is not simply that male judges and legal experts are biased against women, but that they are protecting their interests within the wider economic system, which results in their bias in favour of both male and upper class interests (1980:73). Kingdom compares this theoretical position, which runs through the book, with the jurisprudential position of legal realism as contained in the work of Jerome Frank (1949). She argues:

'they both identify bias, that is, presumably, the intrusion of determinants outside legal statutes as having effects on legislation and on legal decisions. ... 'the law' is to be understood as a corpus of legislation *plus* the interpretations, decisions and opinions given by members of the legal profession and by legal experts. ... In the case of Sachs/Wilson, legal practices register bias on the part of men, bias which is variously described as male, upper class, partial, frequently hidden but knowable, but which is always defined as somehow rooted in the non-legal reality of material or economic interest.'(1980:80).

Kingdom criticises Sachs and Wilson for presenting legal practices as a 'perfect register' of male upper class interests, thereby reducing the form and content of the law to extra-legal determinants (1980:83). This type of theorising about the law gives such

⁹ It should be noted, in fairness to Sachs and Wilson, that they do point to the difficulty with the notion of impartiality, which presupposes the inequalities over which it must be neutral as enduring social categories. They state: 'The notion of a fair trial is crucial to the legitimation of rule in modern Western states.'(1978:52). However, this point does not inform the work as a whole, which does seem to rely on a critique of the partiality of legal personnel.

¹⁰ This would seem to be Sachs and Wilson's own argument when they say that male judges who articulated mysogyny were not conspiratorial but were sincere in their beliefs, which was what enabled them to act more effectively in their own interests (1978:52).

a broad base as the 'real root' of law, that many different ways of explaining particular legal decisions could all be accommodated within it (Kingdom, 1980:84). It also fails to see the interactions between the law and other arenas of social life, such that law may influence as opposed to being simply the effect of them. Furthermore, Kingdom argues, 'the law is not the *result* of an economic system - it is a system of production and exchange relations' (1980:82, original italics). It is a productive part of society and not simply reflective of it. Kingdom quotes Paul Hirst, who, in turn, draws upon the Althusserian notion of interpellation

'Subjects are not merely recognised but constituted in the form of law. Law is an imaginary representation of an aspect of men's relation to their conditions of existence. It is in the law that men are constituted as subjects in the commodity form. Law interpellates individuals as possessive subjects. Law defines and justifies itself by referring to what it creates as a reality it gives recognition to.' (Hirst, 1979:83, quoted in Kingdom, 1980).

The second phase of feminist analyses of law, as depicted by Naffine (1990), moves beyond a critique of law's bias in certain given instances. In the second phase the law is theorised as an expression of a masculine point of view, a system that is indeed run by men, but more fundamentally, a system based upon a 'harsh, uncaring, combative, adversarial style of justice which essentially reflects their own way of doing things.' (Naffine, 1990:7). This perspective regards law as 'conceived through the male eye; it represents the male perspective. It starts from the male experience and fails to recognise the female view.' (Naffine, 1990:8). Thus present law and legal practice cannot be reformed within the current system. It is a much more radical change that needs to occur.

The writer identified by Naffine and who shall be taken here as exemplifying the second phase is Catharine MacKinnon. MacKinnon argues that feminism comprehends that 'what counts as truth is produced in the interests of those with power to shape reality' (1983:137). MacKinnon argues that the state is male and that the law 'sees and treats women the way men see and treat women.' (1983:140). The state, in part through law, institutionalises male power (1983:141). Many of MacKinnon's arguments have been articulated around sexual violence by men against women because, as discussed in Chapter Two, it is sexual power which MacKinnon theorises as the primary sphere of male power. Sexual objectification, moreover, is the primary process of the subjection of women. Although incest is located by MacKinnon as part of what feminism

has revealed as the central sphere of male dominance (1982:529), ie. as about control of female sexuality, it is rape that has received her closer attention.

Rape has been an issue around which feminists have long protested (early writings include Medea and Thompson, 1973; Russell, 1975; Connell and Wilson, 1974; Amir, 1971). Along with 'Reclaim the Night' processions, campaigns have been directed at getting better treatment for women who have been raped from the police and judicial system. For MacKinnon, however, this courageous work is not enough. Reforming the law does not strike at the root of the problem:

'Initiatives are ... directed toward making the police more sensitive, prosecutors more responsive, judges more receptive, and the law, in words, less sexist. This may be progressive in the liberal or the left senses, but how is it empowering in the feminist sense? Even if it were effective in jailing men who do little different from what nondeviant men do regularly, how would such an approach alter women's rapability? Unconfronted are *why* women are raped and the role of the state in that.'(1983:139).

The very definition of rape in law, MacKinnon argues, reflects a male understanding of what violates women. The distinction that the law sees as obvious between rape and heterosexual intercourse is difficult for women under the conditions of male dominance (1983:142). MacKinnon argues that this is an instance of the male perspective of law:

'Women do resent forced penetration. But penile invasion of the vagina may be less pivotal to women's sexuality, pleasure or violation, than it is to male sexuality. This definitive element of rape centres upon a male defined loss, not coincidentally also upon the way men define loss of exclusive access. In this light, rape, as legally defined, appears more a crime against female monogamy than against female sexuality.'(1983:142).

Thus the understanding of rape from the legal point of view is a male understanding of the harm of rape. This is a specific example of MacKinnon's central thesis that the objectivity which the law is generally taken to hold is in fact is the epistemological stance of which objectification is the process. It is women, furthermore, who are objectified. Thus, in contrast to feminists who would seek the impartiality of law and the legal process, MacKinnon argues that objectivity is not in the least desirable. It is the stance which goes hand in hand with the objectification of women.

'the state will appear most relentless in imposing the male point of view when it comes closest to achieving its highest formal criterion of distanced aperspectivity. When it is most ruthlessly neutral, it will be most male.'(1983:149).

For MacKinnon, therefore, to seek impartiality in the sense of equality of treatment with men is to fail to deconstruct the notion of objectivity by which the law supposedly operates. Once a feminist analysis is made of the goal of objectivity, she would argue, it is revealed that

'The state's formal norms recapitulate the male point of view on the level of design. ... Neutrality, including judicial decision making that is dispassionate, impersonal, disinterested and precedential, is considered desirable and descriptive. ... Relatively seamlessly [all aspects of the law and legal process] promote a dominance of men as a social group through privileging the form of power - the perspective on social life - that feminist consciousness reveals as socially male.'(1983:148).

It will now be clear how this second phase of feminist analyses of law differs from the first on the question of reform. Nevertheless, MacKinnon has been highly involved in efforts to change the law in the areas of pornography, where she coauthored the proposed Minneapolis ordinance which defined pornography as sex discrimination and sought to give a civil right of action for damages to those affected by it in any of a number of ways (including coercion into pornographic performances or having pornography forced upon them). MacKinnon has also supported the development of laws to deal with sexual harassment (1987:103-116). This possible contradiction between MacKinnon's theory and her actions has been pointed to as raising doubts about whether reform is effective or wise (Lacey, 1989). However, the actions of the author need not prevent consideration of her work as a legal theory.

The central difference between the first two approaches or phases of feminist work on law is that whereas the first tended to criticise the practice of law and argue that legal decisions were the result of the judiciary protecting their own sex and class interests, the second understands the law in *toto* as reflective of the masculine point of view. Even a woman working from within the law as it now operates would therefore be forced to follow the masculine methods and understandings that the law sets up as 'objective', which would, in turn, work to uphold male dominance.

The third phase of feminist theory rejects the notion that the law could ever coherently represent male interests. The law is not as uniform or coordinated as that

perspective would suggest. To see the law as simply working against women in every aspect is to essentialise both the law and the group women (Cousins, 1980). Neither are coherent and undifferentiated blocks that can be theorised in opposition to each other. The stress of this third phase, therefore, is on the complexities and contradictory nature of law and the legal system that contradict the way in which it presents itself as neutral, consistent and rational. Again, Naffine (1990) provides a useful summary:

'Law therefore is not simply a vehicle for men's oppression of women, as the first phase suggested. Nor is it simply an embodiment of the values of the male culture, as the second phase thought. Indeed, law is unable to muster the degree of rationality, internal coherence and consistency which both approaches necessarily imply. And yet the law remains an important site of feminist struggle because of the many ways it constrains and controls the lives of women.'(1990:13).

Naffine draws on the work of Carol Smart (eg. 1984, 1989) who studies English law and Frances Olsen (eg. 1983; 1984) who studies American. Here the work of Smart will be considered, since it is with British law that this thesis is concerned.

In the chapter on theoretical issues in The Ties That Bind: Law, Marriage and the Reproduction of Patriarchal Relations (1984), Smart presents her critique of earlier feminist work on law. She argues that

'It is all too easy to move from an instance of the exercise of sexism, for example a male chauvinistic utterance and a discriminatory decision by one or even a number of judges, to a statement that the law is sexist, or that it is an instance of male power exercised in the interests of men. It is this failure to keep separate these levels of analysis that has produced feminist versions of the conspiracy thesis in the field of law. ... But the idea that the law simply serves the interests of men against those of women and that legislation and legal practice is constantly guided by these principles does not stand up to closer examination.'(1984:18-9).

Smart points to the victories that have been gained through the hard struggles of women, which suggest that the law does not always operate conservatively and in the interests of men. Moreover, Smart argues, a conspiracy thesis¹¹ assumes that it is possible to unambiguously identify 'male interests'. This is not always so. Smart gives the example of custody of children on separation or divorce. The fact that courts

¹¹ In my reading, Sachs and Wilson do not present a *conspiracy* theory. See footnote 10. They explicitly state that the judges were sincere in their beliefs. Nevertheless, Smart's point still stands.

presently tend to favour the mothers in these cases seems to be premised on the notion that it is in the 'best interests of the child' to reside with its mother. Smart argues,

'while the law is in one instance reinforcing the ideology of motherhood, it also increased the power of mothers within the family, which can hardly be said to be in the interests of men.'(1984:20).

Furthermore, Smart rejects previous feminist analyses of law on the grounds that there are also divisions between men, such as class divisions, which legal decisions may perpetuate (1984:20-1).¹²

Smart's approach to law is not to attempt to build a 'definitive grand theory' on Law and Patriarchy. Such attempts, she suggests, are misguided (1984:xiv). Instead, following Hall *et al* (1978), Smart contends that the law has a positive and educative function, being part of the 'production of consensus'(1984:21). Other agencies, such as the media or the education system may be more important, but

'the law, through its refusal to recognise such phenomena as rape in marriage, by its treatment of wives' earnings as husbands' property, by its reluctance in practice to recognise domestic violence, and by its criminalisation of women prostitutes sustains, perpetuates and justifies a consensual view on sex roles and the relative rights and duties of men and women.'(Smart, 1984:21).

For Smart, the law is 'complex and contradictory' (1984:22). It is not a homogeneous entity, but is the site of practices and discourses that cannot and do not operate to produce a uniform result (1984:22). Smart argues that grand theorising about the law risks presenting the law as homogeneous and uniform, and she therefore suggests that the feminist theorist should take instances of specific legislation in order to study the complexities of the practice of law as it relates to women. In The Ties That Bind, Smart presents such an analysis in the area of marriage and family legislation (1950-1980) looking at how, in its fragmented and contradictory fashion, the law produces and reproduces ideologies of the family. She encapsulates her theoretical argument in her statement that

'the law does not just reflect patriarchal relations inside the family, but in addition reproduces patriarchal relations within the family.'

¹² This point is one that Naffine (1990) takes up in her exploration of law.

... to conceptualise the law as a repressive tool of a patriarchal state is an oversimplification of the role of law in sustaining the social order. I do not see the law simply as a conservative force ... On the contrary, law itself is seen as multifaceted system of regulation, containing its own contradictions, and most importantly, capable of change and positive influence rather than just negative restraint.'(1984:221).

In her more recent work, Feminism and the Power of Law (1989), Smart continues and develops her argument that the law is not a unity nor a tool of some greater power such as 'patriarchy'. She reiterates the necessity of looking at law in its specificity rather than generality. Her 'vision' of law is

'not one that is unified but *refracted*. That is to say that the law does not have one single appearance, it is different according to whether one refers to statute law, administrative law, the enforcement of law, and so on. It is also refracted in that it is frequently contradictory even at the level of statute.'(1989:164, original italics).

The development in Smart's thesis is in her analysis of the way in which law 'exercises power and the extent to which it resists and disqualifies alternative accounts of social reality'(1989:4). In her theorising of this process Smart draws upon the work of Foucault¹³, especially upon his writings on power, truth and knowledge, in order to argue that

'If we accept that law, like science, makes a claim to truth and that this is indivisible from the exercise of power, we can see that law exercises power not simply in its material effects (judgements) but also in its ability to disqualify other knowledges and experiences.'(1989:11).

Smart criticises Foucault for his implicit rejection of the law as only operating in a repressive and negative mode. As discussed in preceding chapters, Foucault's concept of juridico-discursive power is based upon an image of law as negative, as presenting lines between the licit and the illicit. Smart argues that the law can also operate in a

¹³ Foucault's work has been used in feminist analyses of law before, by Edwards (1981). However, Edwards work uses Foucault amongst others, to investigate the one area of 'female sexuality' as it is drawn into the legal sphere (eg. in rape trials). Smart's work, on the other hand, uses Foucault in a much broader way building suggestions for the study of all law from a feminist perspective. For this reason I will concentrate upon Smart's analyses.

disciplinary mode, as the increasing 'welfarism' of law indicates. Smart's argument highlights the fact that increasingly psychologists, social workers, psychiatrists etc. are being constructed as experts to whom the court should listen at the trial stage (as Foucault himself was aware, see eg. 1979). Furthermore, the courts sentencing powers are becoming increasingly concerned with disciplinary modes of punishment such as community service, compulsory counselling, etc. Foucault was aware of these developments, but in *THS* he seems to fall back on a characterisation of law as a formula by which certain acts are declared illicit and punished.

One of the realms in which Smart situates her analysis of law is rape law. Another is child sexual abuse. Because of their relevance to this thesis, these are the examples that will be used to illustrate Smart's arguments (other examples of Smart's include pornography and 'surrogate' mothering). The law on rape and the practice of the rape trial provide examples of what Smart regards as the efforts of law to disqualify other knowledges.

Smart's most powerful argument in her discussion of rape is the argument that rape trials repeatedly involve the disqualification of the woman survivor's experience. The rape trial disqualifies the women's experience by selectively listening to her knowledge of the events. The woman cannot tell the court how she understood the events, but is guided through her experience according to what the law has decided the court 'needs' to know. The law only hears what it deems to be legally relevant. It decides what 'really' happened through a process by which it establishes itself as the only key to the real Truth. In the rape trial only particular truths of female and male sexualities and of heterosexual behaviour are allowed to pass as true (see Adler, 1987 for detailed analysis of rape trials), and the 'inevitable and natural predatoriness of Man ... is condemned only if it oversteps certain boundaries' (1989:43). Thus Smart's argument is that rape is an example of the

'mechanisms by which the law consistently fails to 'understand' accounts of rape which do not fit with the narrowly constructed legal definition' (1989:26).

When Smart turns to the issue of child sexual abuse, she concentrates in the main, upon the 'Cleveland crisis' of 1987, in which an unusually large number of children were diagnosed as having been sexually abused by a new (female) paediatrician, stretching the

resources of the social services and causing accusations that the doctors were wrong and thereby guilty of malpractice.¹⁴ The parents of the children involved formed a self help group and campaigned against the doctors. The media, by and large, sided with the parents. Smart argues that there was an unwillingness to believe that child sexual abuse could ever occur on such a scale, and the 'moral panic' (Cohen, 1972) that ensued was widely represented as 'a struggle of the nuclear family against an over-invasive state'(1989:63). Here Smart seems to draw less upon Foucault than upon Donzelot's (1979) extension of Foucault's arguments.

In the case of child sexual abuse, Donzelot's arguments are potentially very interesting. Around the family the experts of the 'psy' professions and the agents of the state gather, drawing child sexual abuse into their spheres of social work, psychiatry, medicine, law. Thus the protection of children involves several different sorts of interventions in the family. Guidelines for dealing with sexual abuse are drawn up or reviewed, 'new' medical signs (ie. the anal dilatation test) of sexual abuse are debated, therapies are discussed, all of which, Donzelot's argument would run, are then used to 'police' all families.

The pivotal role Donzelot accords the mother in the state's government through the family is also interesting in light of the 'Cleveland crisis'. Smart reports that sometimes the procedure adopted by the Cleveland social services and police consisted in forming an alliance with the mother. In short, the mother became responsible for keeping the abuser away from the child. Smart argues that this is a mixed blessing for the mother for although she still has the child, she is rarely involved in drawing up the arrangements (1989:60). In the early stages of detecting an offence, therefore, the agencies at the periphery of the law's interventions, lead to a contradictory situation for the woman. This is the mother's ambivalent role that I discussed in Chapter Four in relation to feminist claims that incestuous abusers cannot be identified by any particular criterion. The claim can operate as a critique of the family, but also as a conservative force, once again tying women to children.

Moving to the court room situation, Smart uses Donzelot's concept of 'psy' professions in her analysis of how the law tends to deal with child sexual abuse. She

¹⁴ As the report of the inquiry showed, however, the 120 children actually came from just 44 families (La Fontaine, 1990).

argues that the 'psy' professionals conflict with the law as the law, trying to establish its truth of child sexual abuse, attacks the professionals' methods of establishing truth as unrigorous. Thus, Smart's use of Donzelot in the context of child sexual abuse is one which highlights the move of the 'psy' professionals into the field of law and the ways in which these truths conflict at the court room stage.

Smart argues that feminist efforts should be concentrated at studying the law's 'power to define and disqualify'(1989:164). The power of law that Smart has focused upon in her work has been 'in terms of a discourse which is able to refute and disregard alternative discourses and to claim a special place in the definition of events.'(1989:162). It is feminism's power to redefine the truth of events that Smart regards as its political value.

My Approach

As will probably be clear, the approach to law in this thesis is closest to the work of Smart (1984; 1989). In this thesis law will not be treated as a homogeneous whole. In focusing on the specific topic of incest, I am following Smart's perspective that one cannot speak of the Law's relationship to women or, indeed, to feminism, as if law acted in an uniform fashion. It is in the focus on particular legislation that one can begin to understand the processes and practices of law. Moreover, it is the dependence of law on other knowledges, the fragility of law as a discourse, that this thesis will expose, thereby deconstructing the image of law as autonomous and internally coherent.

Having acknowledged that this thesis follows Smart's general perspective, I shall now point to how it differs from it. First, it differs in its relationship to Foucault. The following chapters respond to Foucault's arguments around discourse, knowledge and truth, as did Smart (1989)¹⁵, but it will also be using the more detailed arguments from THS that the preceding chapters have explored. What power/knowledge strategies can be seen to be involved in the discourse that has led to creation of these laws? In particular, it will be drawing upon the discussions of incest from Chapter Four. I want to

¹⁵ The use of Foucault to theorise law has also been explored outside feminist work, see Turkel (1990).

consider how incest is spoken about in relation to the notion of a continuum, and how the notion of the incest prohibition contributes to the debates.

Secondly, this thesis takes a step 'backwards' from Smart's analysis of law. Whereas Smart is interested in looking at how the law disqualifies other knowledges in the court room, as the example of the rape trial illustrates, this thesis considers the way in which the legislation on incest is itself built upon a battle between various knowledges.¹⁶ In these battles it is not 'the law' that disqualifies other knowledges because 'the law' as such does not yet exist. It is the various knowledges that meet to contribute to the constitution of the form and content of the legislation which can be understood metaphorically as in battle as they vie to gain status as the Truth through the stamp of legal authority.

Smart does look at some of the early English incest debates. But here, however, the language that had been used to describe the process of 'disqualification' in the rape trial is dropped:

'The Act focussed on the 'unnaturalness' of the offence rather than the question of the abuse of authority or the exploitation of a minor. The fact that a version of the Bill which included step-daughters was rejected shows that it was the issue of kinship which was central to the disgust that was felt about this abuse, not solely the need to protect children. By the same token, criminalising incest between relatives over 16 years of age ignored the continuing element of abuse and exploitation of young women who had been abused during their minority years.'(1989:54-5).

The language that Smart had used to analyse the rape trial, that is, as a process of the *disqualification* of women's *knowledge* through the legal process, has become a language in which the *truth* of incest is simply '*ignored*'. Thus Smart might be read to imply that there is a Truth of incest: the object incest is knowable, that incest is about 'the abuse of authority' and that the criminalisation of incest is really necessary to protect children. This essential Truth of incest is ignored Smart contends by a law which makes the issue of kinship central. It is my contention, however, that even at this level, at the level of law creation, there is the competition between knowledges which Smart associates with the trial. Feminist knowledge cannot be presumed as the

¹⁶ Smart hints at this when she argues that law can be contradictory 'even at the level of statute', but she does to explore this as a process of disqualification that she illustrates in the courtroom (1989).

essential Truth which is 'ignored'. It enters the debates on the same level as other knowledges of what incest is 'about'. The process of creating incest law is a process in which knowledges of incest are brought together at the site of law as the latter seeks to establish or produce the legal Truth of incest. It is to this process that Chapters Six and Seven are addressed.

I will explain my argument more fully in the following chapters. Briefly, my argument, as it develops across the following chapters, is as follows. In Chapter Six, I explore the various images of incest that are constructed through the discussions of incest in the debates. This is an extended exercise in revealing that the object 'incest' which is under discussion is itself in negotiation, is 'formed by the discourse' in which it is discussed. That is, when the speakers speak of incest they can construct opposing images. What is incest 'about' can vary widely across the debates. Whilst paying attention to the two periods under discussion, it is not the case that there are just two different images constructed corresponding to two different points in time. The chapters are less concerned with time than with what might be termed 'discursive space'. That is, how the object incest is given discursive space in criminal law. In Chapter Seven, I push this argument further, and argue the shifting 'image' of incest is in large part due to the various knowledges which meet at the site of law in these debates. The different knowledges of what incest is 'about' and, more specifically, 'what is wrong (or not wrong) with incest' pull the object 'incest' onto their different agendas. The process of law creation becomes a process through which the meeting of these various knowledges work to construct the specificity of the offence incest such that there needs to be a separate offence.

Chapter Six

The Parliamentary Debates (I): Images of Incest

Analysing these parliamentary debates reveals that the object of discussion - 'incest' - is itself under negotiation. Although the speakers in these debates are gathered to discuss incest in a process of law creation in which no one explicitly poses the question: what is incest?, the speakers are necessarily involved in constructing the object of which they speak. Eventually there will be an image of incest that is written onto the statutes as the incest that will be punishable as a crime. In the debates preceding that moment of (relative) fixity, the object 'incest' is being continually constructed and reconstructed. This exercise is therefore one in which I am interrogating the Truth of incest in criminal law in order to see how this Truth was formed.

As each speaker speaks, he or she constructs an image of incest. Since there is no one image that is consistently evoked, the debates involve a continual shifting of images of the incest situation. In this chapter I want simply to highlight the different images of incest that are constructed during the course of the discussions. For the feminist reader an important question is whether and how a feminist image of incest is constructed. In order to place some organisation on these shifting images, I investigate the images through four questions. These questions are as follows: Does incest happen? What acts constitute incest? Who is typically involved in incest? and Who is the victim of incest? In this exploration, I shall also be thinking about how the ways in which incest is being constructed relate to the discussions of Chapter Four, in particular to my arguments there about the discursive nature of the incest prohibition, and, modifying Foucault's schema slightly, the continuum of ways of speaking about incest and the knowledges that are drawn upon in this process of law creation. These arguments are in this chapter only pointers to the arguments that will be made in more depth in Chapter Seven.

i) Does incest happen?

Before any image of 'the incest situation' can be articulated, the speakers have to believe that it occurs. In this section I explore the debates in order to see how the speakers speak of the occurrence of incest.

In 1903 Colonel Lockwood states that he had been induced to introduce the Incest Bill 'by the number of such crimes being committed in the rural districts of England' (5.3.1903, Commons). Similarly, in the Lords in 1908 the Bill is introduced by the Lord Bishop of St. Albans, who tells the House that 'the special reason for introducing the Bill ... is the great frequency of incest' (2.12.1908). He proceeds by giving statistics from the National Society for the Prevention of Cruelty to Children, Birmingham education authority and other sources. These bodies were cited as the experts on the subject of the social practice of incest.

Thus the occurrence of incest is immediately affirmed, and is given as the main reason for the introduction of the Bill, but at the same time its occurrence is affirmed only within the limiting parameters of the phrase 'in the rural districts'. This qualification might be read as linking the practice of incest to a time 'before the law' in accordance with theories of the incest taboo as the gateway to civilisation (in the mode of Levi Strauss), with urban areas associated with civilisation, and rural with more primitive tendencies. This approach to the occurrence of incest is articulated again in 1908 when it is argued

'There was no suggestion that this offence was on the increase; indeed, it was far less known now than it was twenty or thirty years ago in parts of England ... Was there the slightest reason to doubt that the spread of education and of civilising influences was doing away with this evil...?' (Mr Rawlinson, 26.6.1908, Commons).

Here the occurrence of incest is not denied, but it is placed within parameters - 'parts of England' - and is associated with a time before widespread education and before civilisation, before the incest taboo.

A contrasting way in which incest is placed within boundaries is by associating it not with uncivilised or rural life but with urban influences and/or modernity. In 1903 for example, the Earl of Donoughmore told the Lords

'I have made careful enquires in many directions and have ascertained from many people who have had experience both in large towns and rural districts that cases do very often occur' (16.7.1903, Lords).

Thus incest is now also linked with large towns recalling the suggestion mentioned in Chapter Five that incest was the result of over-crowding (see Wohl, 1978).

This drawing of boundaries that in the early debates accompanies and qualifies the affirmation that incest does take place extends to countries. Because the Bill was concerned only with England and Wales, comments were made with reference to other parts of the United Kingdom. In 1903 one speaker stated 'this crime had never been heard of in Ireland' (Mr Hemphill, 26.6.1903, Commons), and in 1908 another states that although incest 'was rife, he was sorry to say, in certain parts of the country ... In Scotland it was less common' (Mr MacLean, 26.6.1908, Commons). This construction of incest as a peculiarly English (and Welsh) problem was contested, however, with the suggestion that the Bill be extended to include Scotland for 'the offence with which the Bill proposed to deal was not confined to the country south of the Tweed.' (Mr Malcolm, 26.6.1903 Commons).¹

The only suggestion that incest simply does not occur might be seen in the arguments that the Act would lead only to instances of vindictive false allegations and blackmail. Speakers in the 1908 Commons debate ^{the argument} that false charges would be brought which would be very difficult to disprove (Mr. Rawlinson, 26.6.1908; Mr. Staveley-Hill, 26.6.1908). But even these suggestions are made in the context of different arguments against the Bill which do affirm incest as an offence that is committed.

In these early debates, therefore, it is clear that the occurrence of incest was not straightforwardly denied. To this extent, the women (and men) who had campaigned to get incest onto the agenda had been successful. That incest occurred was accepted. Yet within this general affirmation there is the drawing of boundaries. Sometimes this places incest within rural communities which seems to be an articulation of theories of the incest taboo as the hallmark of a civilised society, with rural districts as 'lagging behind' the progress of society. Other boundary places incest within towns, arguably associating it with modernity, with over-crowding, or with (the working) class. The third mode of boundary-making places incest within countries.

Thus far one might conclude that whilst feminists had managed to be part of the pressure on the government to debate incest at all (Jeffreys, 1985), the discussion of incest once it reached the Houses began to draw on other theories and images of incest. Thus incest is acknowledged to occur but it is associated with uncivilised or uneducated times or with

¹ He makes this suggestion even though it had already been stated that incest was already criminal in Scotland.

urban areas. But how do the early debates compare with the more recent discussions around the updating of Scots law on incest?

Throughout the legal debates updating Scots law in the 1980s there is also an acceptance that incest occurs, but the boundary-making that qualified the affirmation of the practice of incest in the earlier debates to within certain boundaries is no longer voiced. Nevertheless, the premises on which it has been suggested above these boundaries were made are still prevalent enough to require repudiation. The Scottish Law Commission's Memorandum published in April 1980 states that

‘incest in contemporary society has been viewed typically as a phenomenon associated with poverty or inadequate housing or with conditions of remoteness or social disorganisation.’(1980:7)

But, the authors argue, it is ‘wrong to assume that incest takes place only among the underprivileged’(1980:7). Furthermore, in the Commission’s Report, written after comments had been received from various agencies, they reject any country boundary by stating that ‘the problem of incest is not unique to Scotland’(1981:5). The occurrence of incest is now seen as spread across class and countries.

These repudiations of boundary making suggest that whilst the notion of boundaries is still sufficiently current to require comment, the occurrence of incest within boundaries of region, class or country is no longer seriously entertained by these speakers. This impression is confirmed by the debates in both Houses of Parliament in 1985/6 and the minutes of the Standing Committee in 1986, in which no speaker makes such a qualification. In the Standing Committee, one speaker states that ‘I have not the slightest doubt that incest is frequently committed’, although ‘it does not seem to have caused shock waves around the world’(Mr. Fairbairn, 1986:13).

However, the occurrence of incest still seems to be approached ‘suspiciously’. This suspicion is not so much one of whether incest occurs or not, but is instead a suspicion in the sense that it is often suggested in these debates that the occurrence of incest is ‘unknowable’, that is, unmeasurable. The Memorandum suggested that the incidence of incest was ‘extremely difficult to estimate’(1980:7) because it is kept secret by those involved. In their Report, the Law Commission refer to the cases of unreported incest to which many of their commentators direct attention, ‘but when we sought to quantify the incidence of such cases we were generally referred to varying estimates none of which could be verified with any accuracy.’(1981:32).

Discussions in the Houses and Standing Committee also suggest that the occurrence of incest as something unknowable in the sense that it is unquantifiable:

'It is clear that the cases that come to court are only, so to speak, the tip of the ice-berg, the extent of which we do not know'(Lord Morton of Shuna, 9.12.1985, Lords).

'there seems to be a belief among social workers ... that the incidence of incest is considerably higher than the conviction and charging figures show. There is now quite a lot of evidence that they are right.'(Mr. Maxton, Standing Committee, 1986:13)

'I do not have the slightest doubt that incest is committed and I do not know how large the problem is.'(Mr Walker, 4.7.1986, Commons).

This is confirmed by later speakers, who, furthermore, depict certain professionals as the ones who know about incest, the 'experts' on incest:

'the noble Lord, Lord Morton, referred to the tip of the iceberg theory. This has been a theory which has been widely held. I recall when involved in cases of incest many years ago hearing this view expressed by many social workers, medical men and others... To what extent this is precisely true I cannot be certain.'(Lord Wilson of Langside, 9.12.1985 Lords).

Throughout the 1980s discussions of incest therefore, there is the acceptance that incest occurs but the occurrence is stated as something one cannot measure for certain. The tip of the iceberg theory is presented as the newly discovered truth, in contrast to the suggestion in the parliamentary debate at the beginning of the century that incest was fading away. The picture of history is therefore painted differently by the speakers. In the early debates, things were seen to be improving, insofar as incest was seen to be fading away. This optimism is no longer voiced in the 1980s. In fact, in the Commons debate, Ms. Jo Richardson argues that 'until fairly recently [incest] has been swept under the carpet' and suggests 'there is considerable violence against young women and children by members of their families ... I suspect that almost every family knows someone who has suffered.'(4.7.1986, Commons).

Thus incest is regarded as widespread and yet unmeasurable by several speakers in the 1980s debates. This new knowledge of 'not knowing' is given credence, furthermore, by reference to social workers and 'medical men' who seem to be accorded the role of experts on the incidence of incest, although there is the suggestion, above, that '*every* family knows someone who has suffered' incest. In Foucault's sense, these ways of speaking about incest, as a problem of unknown proportions for medicine and social work construct incest as a sexual danger, and link it with those agencies of bio-power who must be forever watchful of the family.

The general acceptance that incest occurs, however, does not challenge the notion of the incest taboo in any way. The Law Commission's Memorandum writes of the incest prohibition, 'its occurrence is recorded in all known societies with only very few, partial exceptions' (1980:3). At this point the authors quote Murdock's (1949) Social Structure thereby drawing upon anthropological literature (of a time when the incest prohibition was rather unproblematically regarded as an universally observed rule, see Chapter One). The Memorandum goes on to state that the Commission does not see itself as competent to assess the theories surrounding why the incest taboo exists and its functions, but they seem to favour an analysis of the taboo as 'controlling the potentially disruptive cross-sex attractions and rivalries' by maintaining appropriate counter-attitudes (1980:3). Here the influence of psychoanalytic theory can be seen. Incestuous desires are presupposed, and incest is constructed as a problem of not maintaining the incest prohibition. Incestuous desires are seen to be the natural state of sexuality in the family, which the incest prohibition needs to keep in check. Incestuous desires are spoken about, furthermore, as 'cross-sex attraction', thereby ruling out a need to prohibit or even consider forms of incest that do not involve male and a female.

There is in the Memorandum, therefore, both the acceptance that incest occurs as a practice *and* reference to a universal incest prohibition. As discussed in Chapters One and Four, it is not the case that those who uphold the notion of an incest prohibition are necessarily contradicted by the occurrence of incest since it may still be plausible to speak of a social rule that is sometimes broken. However, as I argued in Chapter Four, the incest prohibition is a social rule which has taken on the status of an unquestioned Truth. The breaking of the incest prohibition is understood in relation to that Truth and as deviant simply because it breaks that Truth. Knowledges have been built up which maintain that the incest prohibition exists across the world and functions in each individual's lives. Knowledges from other disciplines complement these by understanding incest behaviour as perverse, asocial and abnormal. In the Memorandum, the knowledge and field of expertise by which the assertion that there exists an incest taboo is validated is that of social anthropology, in contrast to the expertise of social workers and medicine in the discussions of the occurrence of incest. In this acceptance of both the taboo and the practice, the taboo is taken as fact and the occurrence of incest is regarded as a violation and failure of the taboo. Thus the existence of the taboo itself is not questioned but is always reaffirmed as a (or even the only) Truth in this area in which it is difficult to know things for certain. The taboo's existence is validated by reference to the 'experts' of anthropology, and observations to the contrary do not threaten its discursive status as Truth.

This tension between taboo and occurrence, which I have discussed in Chapter Four, also runs through the Report of the Scottish Law Commission. Alongside the statements about the occurrence of incest and its effects (genetic and psychological), the authors affirm that the incest taboo exists, and they quote from comments they received which referred to the incest prohibition as

'ancient and universally prevalent, as representing public opinion, as a basic feeling that certain relationships are not fitting and as rendering sexual activity within the family unthinkable'(1981:10).

Although in the debates of the Houses and Committee of 1985/6, the taboo is not mentioned as such, and instead it is the practice of incest which receives space in the discussion, there are nevertheless comments which make general assertions about what might be loosely termed 'the incest taboo'. Introducing the Bill in the Commons, Lord Wilson of Langside argues

'We might today - most of us - express our repugnance at the idea of sexual relations between close blood relations in language somewhat different from that of the legislators of 1567. However, I should not have thought that the repugnance is surely at least as strongly and widely felt.'(9.12.1985, Lords).

This quotation refers to the 1567 statement that incest is 'vile and fylthie lust'. The statement of repugnance is a statement that incest should be prohibited. It reveals the prohibition of incest, in law at least, as a reaffirmation of a discursive prohibition. It is worth noting again that the argument that the incest prohibition is 'simply' discursive, does not mean that it is not real not that it does not have real effects (such as the imprisonment of offenders, for example). The quotation illustrates the way that the incest taboo is imputed to society as a whole - 'widely felt' - and the way of speaking that presents the legal prohibition as a response to 'the incest prohibition' rather than a part of it. This way of speaking is continued in the Committee. In discussing which relationships should be legislated against as incestuous, a speaker states that in the case of adoption 'Admittedly there is no blood tie, but because of the other factors *which society deemed important*' it should be included, and further that 'there is no evidence that where the relationship is between in-laws, *the public deem* that to be worthy of being called a crime of incest'(Mr. James Wallace, 1986:4).

Summary: The occurrence of incest is never denied in either the early or the later debates on incest. On the contrary, its occurrence is accepted. However, in the early debates, there are certain qualifications placed around the statement that incest occurs, creating what have been termed here 'boundaries'. In contrast, in the debates of the 1980s these discursive

boundaries no longer qualify statements of the occurrence of incest. Indeed, incest is spoken of as widespread and the making of boundaries is explicitly rejected, especially one which would enclose incest within a socio-economic class. The 'tip of the iceberg' is a repeated phrase indicating that now the extent of incest is widespread although unknown.

That the occurrence of incest is affirmed can be read as a success for the feminist movements that have in both periods campaigned to get incest recognised as a social practice. However, the affirmation that incest occurs does not mean that the Truth of the incest taboo loses currency. Nor does it mean that categories such as 'feminist workers in the field' or 'incest survivors' are now heralded as the new experts. It seems that the two ways of talking about incest coexist in the discussions, with two sorts of knowledge and two sets of respective 'experts'. On the one hand, the occurrence of incest is accepted and knowledge is attached to social work and medicine. On the other, the incest prohibition is affirmed and knowledge is attached to the academic disciplines of anthropology and sociology.

Thus it seems that Foucault's comments are borne out here in that throughout the debates incest is spoken about as both tabooed and as a social problem. The status of the incest prohibition is unchallenged despite the acceptance that incest occurs, and the tension continues unaddressed. This tension means that the subject of debate 'incest' shifts from one end to the other of the continuum of ways of speaking (see Chapter Four). Incest as a social problem is constructed as danger the proportions of which are unknown. But at other points in the debates, incest is spoken about as an act 'repugnant' or 'unthinkable'.

ii) What acts constitute incest?

In this section the question 'what acts constitute incest?' will be used to explore the image of incest in the parliamentary debates. The feminist analyses of incest have argued that the act of penetration of the vagina by the penis is too narrow a definition of incest. Feminists have tended to suggest that other acts should also be included in discussions, if not definitions, of incest. To what acts do the speakers and authors in the parliamentary debates refer when they speak of incest?

The proposed Bill of 1903 referred to 'carnal knowledge' as the act that constituted incest. From the outset, therefore, incest refers only to penetration of the vagina by the penis, limited both to this one act and to an act involving a man and a woman. Only

heterosexual² intercourse can possibly constitute incest, and in 1903 and 1908 no other acts are considered. This is important in view of the later justifications that will surround this limitation.

The 1908 Bills and eventual Act also wrote of incest as only heterosexual, vaginal penetration by the penis. Again, the possibility that the term might be applied to acts other than this does not occur. During the 1908 debates, the inbreeding argument for criminalising incest, that is, because incestuous intercourse risks genetic malformations in the offspring, first appears. This argument provides a theoretical basis for limiting the offence of incest both to heterosexual incidents and to penetration of the vagina by the penis. However, although the inbreeding argument is voiced in the 1908 debates, it is never explicitly linked to a discussion of acts.

The debates of the 1980s, however, tell a different story. It is again decided that incest should retain its definition as solely the act of penetration of the vagina by the penis. However, now the possibility of including other acts in the definition is discussed and the inbreeding argument is invoked in order to justify continuing to limit the definition in this way. It is argued that the possibility of pregnancy is an important consideration in light of the fact that the genetic arguments against incest are important to the retention of incest as a specific crime. Thus the justification is a post hoc justification, since the assumption that incest was only constituted by this act was always there in the earlier debates of 1903 and 1908. In this way the 1980s debates map a new field of expertise - that of genetics - onto incest in order to continue the association of incest with only this one act. Linking (in order to distinguish) incest with other forms of sexual 'danger', the authors of the Scottish Law Commission's Report note that their definition of incest does not include

'other forms of sexual misconduct which may be extremely serious (such as anal or oral penetration, or penetration of the vagina by something other than the penis), or relatively trivial (such as exposure, or the making of indecent suggestions). Similarly, it does not include homosexual offences.'(1980:13-4).

They explicitly state that

'reliance on some other standard would preclude reliance on the genetic factor as a legal and social justification for retention of the crime.'(1981:14).

² The term 'heterosexual' is used here to refer only to the fact that a man and a woman are involved. It does not carry any connotations about the sexual preference of either.

The genetic argument is not the only reason the Report gives for limiting incest to penetration of the vagina by the penis. The justifications for so limiting the acts that constitute incest also include the argument that it would be difficult to know where to draw the line, that it may be expected to provide a firm evidential basis, that the requirement of penetration is widely known and accepted as incest, and that departure from the requirement may 'tend to weaken the incest taboo'(1981:14). With the last of these the Commission acknowledge the creative power of their own discourse, that the law which they are in the process of creating is itself a part of the incest prohibition. They continue the incest prohibition through the law they pass.

Thus the act of incest remains as it was in the earlier debates, but with justifications. Particularly interesting is the way in which it is now justified 'post hoc' with reference to the inbreeding argument. It may seem that the feminist concern with the definition of incest as too narrow has not impinged upon the parliamentary debates. But the fact that the authors now feel they have to justify the limitation they place upon the term would suggest that the discourses which link incest to these other forms of 'sexual misconduct' have gained enough status to merit response.

In the debates in both Houses (1985/6), the question of which acts constitute incest is not raised. It is presumed through the parliamentary discussions that the constitutive act of incest is understood. Incest is assumed to mean heterosexual vaginal intercourse. The discussions that take place about the relationship of the incest laws to the marriage laws certainly employ this understanding of incest. For example, a speaker in the Standing Committee makes the suggestion that step children should be included in the incest law only until the age at which they would be legally permitted to marry their step-parent (according with the 1986 Marriage (Prohibited Degrees) Act). He argues that including them until the age of 21 put the incest laws out of synch with the marriage laws. He suggests that it is justifiable to keep the age to which a step-parent and step-child are included in the crime of incest lower than the age at which they are allowed to marry, but not vice versa:

'If someone could marry, but not consummate the marriage, it would be ridiculous. But if two people who may not marry were to sleep together, and would not be committing incest, that is tenable.'(Mr MacKay, 1986:20).

Such an image of incest as the act of heterosexual intercourse is also held by those who refer to the procreation of children, as does Mr Michael Forsyth, who asks both the Committee and the House of Commons,

'If ... one takes the view that marriage is not just a legal matter but is ordained for the procreation of children, as the marriage service says, how can it be right for our law to allow *an act which could result in the procreation of children* but not allow that act to take place within the institution of marriage?' (1986:21, also 4.7.1986, Commons, italics added).

This linking of the prohibition of incest with marriage laws continues to regard incest as about heterosexual vaginal intercourse. Furthermore, it speaks of the prohibition of incest (in law) as part of the system of alliance (Chapter Four).

Summary. Throughout the debates under discussion here, incest is held to be constituted solely by the act of penetration of the vagina by the penis. Interestingly, this definition was presumed before the genetic argument against incest was first articulated in the discussions. Later, in the 1980s, the genetic argument is used, amongst others, to justify retaining such a definition. Although incest is always spoken of as the act of penetration of vagina by penis, in the 1981 Report of the Scottish Law Commission the authors do speak of other acts, 'equally damaging', that they decide not to include in the definition. Thus it would seem that there is by this time a need to justify retaining such a definition of incest, and it seems that the feminist discourse which expands the definition of incest to cover these further acts of sexual abuse has been given space here, albeit in order to be rejected as an argument for altering the legislation around incest. Again incest slides from being discussed alongside sexual dangers (the deployment of sexuality) and in relation to a prohibition and marriage laws (the system of alliance).

iii) Who is involved in incest?

In this section, I ask: who do the speakers see as involved in incest? That is, which relationships do the speakers evoke as part of their image of incest? The recent statistics (reviewed in Chapter One) suggest, and feminist analyses of incest have argued, that incest tends to be between an adult male and a female child. Is this the relationship the speakers articulate as they construct the object 'incest' through their debates? What ages do the speakers suggest are involved in incest? In looking at the images constructed in these debates through this question I am considering: which relationships the legislation sought to criminalise and which it did; who the speakers use in their examples when speaking about incest; and who they explicitly refer to as typically involved in incest. The question of typical is difficult because in many of the discussions the speakers purposely give examples

of what they consider atypical instances which the law would criminalise as incest but which the speaker wishes the debate to consider.

In the unsuccessful 1903 Bill, the image of incest is that of an older man and a younger³ woman or a male and female close in age. In the first draft of the Bill (Bill No.51, 24.2.1903) a man was to be guilty of incest if he has 'carnal knowledge' of a female person of thirteen years of age or above⁴ whom he knows to be his 'grand-daughter, daughter or sister'. A female person, on the other hand, was to be guilty if she consents to her 'grand-father, father or brother', knowing him to be so, having 'carnal knowledge' of her. Thus the Bill conveys an image of incest as an older man and a younger woman, or as near in age (as brother/sister might be) but not an older woman and younger male. Interestingly, neither the mother/son nor grand-mother/grand-son relationship was to be punished as incest. In the Standing Committee of 1903, however, the Bill was amended to include 'son' in the forbidden relatives for women, although 'mother' was not added to the list of forbidden relatives for the male (Bill 134). Grand-mother/grand-son was still not included.

In the debates of Parliament in 1903, the issue of who is involved in incest is not raised, and thus one might assume that the speakers in favour of the Bill thought it covered those necessary. However, there is one speaker who argued that it did not cover all the relationships it should, and proposed that step-daughter be included in the list of forbidden relatives

'because, in his belief, the experience of the Bill would show that those were the most serious class of cases.' (Mr Galloway, 26.6.1903, Commons).

It is not clear what Mr Galloway meant by 'most serious'. He may have meant most common or most damaging (to whom it is not clear). Nevertheless, his proposal and its acceptance by the House of Commons shows that the step-father/step-daughter relationship was labelled within the legal debates discourse on incest at this early date as the 'most serious'⁵. In the Lords in 1903, however, the inclusion of step-daughter is immediately questioned - 'I shall ask leave, in Committee, to delete this word [step-

³ When I use the term 'younger' in this chapter I mean younger than the other party imagined as involved in the incest. This may not always mean that the younger party is a 'child'. Whether this implication is also being made will be clear from the context.

⁴ The limit of the age of the woman to over thirteen years of age is because sexual intercourse with a girl under thirteen would already be punishable as 'statutory rape'.

⁵ The whole issue of including affines was an issue at this time since the controversy still raged over whether or not to allow men to marry their deceased wife's sister (see Wolfram, 1983).

daughter] and thereby to confine the operation of the Bill to blood relations' (The Earl of Donoughmore, 16.7.1903). Since the Bill is withdrawn, this speaker does not expand upon the reasons why he wishes to confine the Act to blood relations.

Thus the image in the 1903 Bills, and unchallenged in the debates, is of incest as involving either an older male and a younger female (but over 13) or a couple of the same age. This may be regarded as the success of feminist discourse in getting their knowledge of incest accepted. This interpretation would certainly follow from Jeffreys' (1985) history of the feminist campaigning around child sexual abuse at the turn of the century and their part in putting forward the Bill. The (ultimately unsuccessful) proposal by Mr Galloway sets up step-father/step-daughter as 'the most serious' class of cases, thereby intimating that incest involves adult male/younger female, but that it is a step-relationship which merits attention in discussion on legislation on incest. This is interesting because stepfather/stepdaughter is the relationship that is to dominate the later discussions of incest in the debates of 1985/6. It is also interesting as a reflection on Foucault's arguments in that here issues of blood are brought into conflict with arguments around sexual dangers within the family as the question of whether incest should be confined to blood relationships conflicts with the argument that non-blood relationships are the more 'serious'. The argument that step-father/step-daughter is 'the most serious' form of incest takes the legal discourse away from issues of sex and blood and into issues of sex as a practice and a social problem. Different understandings of what is wrong with incest are informing these arguments. Thus the struggle that is ostensibly over which relationships should be included is also a struggle over a fundamental question: what is incest about, what is wrong with incest? Blood relationships are not what this one speaker sees incest as 'about'. This struggle over what is wrong with incest will be explored in Chapter Seven.

When the Bill to provide for the Punishment of Incest is reintroduced in 1908, the mother/son relationship is symmetrically⁶ included in the drafting, and eventually in the Act (Bills 127 and 185, and Act 1908, see Appendix I). The depiction of incest as older man/younger woman, therefore, is no longer apparent from the wording of the Bill. Yet an amendment proposed and accepted in the Commons in 1908 took guardianship away from any male offender who was found guilty of an offence of incest against a female in his charge, without mentioning a female offender with a male in her charge, which suggests that such cases as the former, which imply an older man/younger woman image, were still closely

⁶That is, for both the female and the male.

attached to the meaning of incest. This amendment could therefore be seen to continue the image prevalent in the 1903 debates of incest as older man/younger woman.

In the Lords debates of 1908, the depiction of incest as older male/younger female is also prevalent. Most clearly in the telegram from the Lord Chief Justice which was read to the House and which argued for the 'urgent necessity' of the Act 'in consequence of the frequency of assaults by fathers on their daughters.'(2.12.1908, Lords). Thus the father/daughter relationship is here clearly attached to the depiction of the practice of incest.

That incest is a form of abuse of *children* by adults (as opposed to between adults) is suggested in the Lords debates of 1908. The source of some of the statistics quoted by the Lord Bishop of St. Albans in his recommendation of the Bill are from the National Society for the Prevention of Cruelty to Children, and another speaker in the Lords argues

'I am under the impression that a very large proportion of the cases - ninety percent or more - can already be dealt with either under the Cruelty to Children Act or under the Criminal Law Amendment Act'(The Earl of Crewe, 2.12.1908, Lords).

In the 1908 debates of the House of Commons, on the other hand, there is a contrasting depiction of incest as an offence committed between adults. One speaker argues against the criminalisation of incest by emphasising that the law would also cover adults:

'If the criminal law was to be brought in to deal with offences against morals, they would be met at every turn with the difficulty that it was adults who committed these immoral offences.'(Mr Rawlinson, 26.6.1908, Commons).

With the introduction of the inbreeding argument in 1908, furthermore, incest becomes depicted as an offence that involves a post-menses female, because the argument relies upon the possibility of conception. The inbreeding argument, therefore, as well as introducing a new set of experts to give knowledge of incest, thereby competing with the knowledge offered from the charitable organisations, feminist or social purity movements that had instigated the Bill, shifts the depiction of incest away from what feminists had been arguing incest was really about, ie. the sexual abuse of female children by adult males, and offers a depiction of incest as involving at least post-menses females.

Thus the relative agreement in the 1903 Bill, that is, that incest involved an older man and a younger woman or a couple close in age, gives way in the debates of 1908 to a more complex discourse with a variety of constructions of incest. The 1903 depictions are still articulated, but there are also different (though overlapping) constructions of incest: as an

offence typically involving children; as involving adults, and as involving at least a post-menses female. These different constructions of which relationships incest is 'about' can, furthermore, be seen to relate to the experts that are looked to, as well as to the ways in which incest is constructed as a problem (or as no problem). For example, the 'adults' depiction is closely tied to the argument that incest is simply a moral problem, whereas the argument that incest is a problem of the deleterious effects of inbreeding leads to a depiction of incest as involving at least a post-menses female.

As discussed in Chapter Five, the relationships that are gathered under the rubric 'incest' in the 1986 Incest and Related Offences (Scotland) Act are more comprehensive than those that were criminalised in 1908 in English law (and see Appendix I). The comprehensive and symmetric (between male and female) nature of the 1986 Act means that no particular depiction of the relationships typically involved in incest is communicated. However, the inclusion of adopted relationships and the related offences does suggest a shift in the understanding of what is wrong with incest from the blood only relationships criminalised in 1908. This shift will be explored further in the next chapter. The important point here is that whilst the Act does not communicate a relationship understood as typical, there is now a mapping out of incest as 'related to' abuses of trust and authority within the household which involve an age discrepancy, and as 'related to' sexual intercourse between step-parents and step-children.

But what of the reports and debates that led to the 1986 Act concerning Scotland? Which relationships were there seen as typical or as what incest is 'about'?

Both the 1980 Memorandum and the 1981 Report of the Scottish Law Commission reproduce statistics on incest cases reported to the Crown Office between April 1971 and December 1976 broken down by the relationships involved. These statistics show that 40 of the total 52 cases were father/daughter incest, compared with 3 step-father/step-daughter, 3 brother/sister, 4 uncle/niece, 1 mother/son and 1 father-in-law/daughter-in-law (1980:80; 1981:59). In all of the father/daughter cases the girl was under nineteen years of age, and in no case was she prosecuted.

These statistics would suggest that the most common form of incest was father/daughter. However, the statistics are treated warily by the authors. As indicators of the extent of crime, this wariness of the statistics may be justified, but it seems there is another knowledge of the relationships typically involved in incest which informs the authors' suspicions. At one point the authors of the Memorandum baldly state:

'a telling pointer to the fact that incestuous intercourse is largely undetected is that although it is generally accepted by researchers that the most commonly occurring form of incest is that between brothers and sisters, the most frequently reported is that between fathers and daughters.'(1980:8).

Thus the image of incest as typically brother/sister is constructed by the authors as of general knowledge amongst researchers who are given here the status of experts. However, the Memorandum as a whole does not convey an image of incest as involving the brother/sister relationship. The chapter on possible psychological consequences of incest conveys an image of father/daughter incest due to the fact that most of the research used had been carried out on this form of incest. The chapter on the genetic effects of incest also draws upon studies in which most of the incest cases are father/daughter. The quotation above reveals that the authors recognised that this was the most frequently *reported* relationship, although they continue at this stage to regard brother/sister as the most common (without specifying the ages of the siblings).

At various points in the Memorandum incest is clearly presented as an incident typically involving children. The authors state that 'the protection of family members *especially children* from injury and molestation' (1980:5) is placed high on their justifications for retaining the crime of incest must be made. Later the authors reiterate that retention of the crime of incest may in part be justified 'for the protection of the younger members of the family'(1980:55). A contrasting image is arguably constructed through the inbreeding arguments because, as discussed above, they rely upon a post-menses female. Whether there is a contrast depends on how one decides when 'childhood' ends. A post menses female might be considered still a child in which case there is no contradiction, but to the extent that this argument depends upon those involved being able to conceive, it constructs a depiction of incest as involving older children or adults. These depictions are not therefore⁷ necessarily mutually exclusive, but they may be.

To some extent, the question of which relationships are regarded as involved in incest loses significance where incest is constructed as a family problem, ie, as a problem to which all members of the immediate family bear some responsibility. Drawing heavily on the work of Maisch (1973), the Memorandum depicts incest as involving the whole family in its chapter on the psychological effects of incest. Especially in the section entitled 'Failure of the Mother's Role', the Memorandum continues to present incest as 'involving' the whole family in a way that has been criticised by feminist writers, in particular where it amounts to 'mother-blaming' (Chapter Three).

⁷That is, the female may be the adult, or may still be considered a child.

The Report of 1981 is based in large part upon the Memorandum, and has therefore similar images of the relationships involved in incest. The notion of incest as usually brother/sister is not stated so baldly in the Report, although the authors do in one place state, more reservedly, 'incest may involve siblings'(1981:28), thereby affirming such an image. If there is a change in the way the Report presents the relationships involved in incest as compared with the Memorandum, it is that the Report seems to stress the adult/child image more than did the Memorandum. Protecting children from abuse is the predominant construction of what the incest laws are for. The child victim is 'the primary concern'(1981:33), the section on court procedures argues for flexibility in order to 'minimise stress on the child as well as on the family in general.'(1981:28), and the parents of a child witness 'should receive expert child guidance'(1981:31). This concern with child protection reinforces an image of incest as involving an adult and a child. (It may be noted, furthermore, that these last comments seem to present an image of incest as involving a child but *not* as involving the child and one of his or her parents, because it seems to suggest that both parents be offered guidance in comforting their child, which implicitly discounts either one of them as the accused.)

However, in considering whether to include the step-parent/step-child relationship, the Report also states that child protection is not the sole purpose of the laws against incest. They state

'Rather than including step-children within the scope of incest merely to afford them protection, we would prefer that means of protecting them to be found from other provisions of the criminal law.'(1981:19)

The commission decides however, that the other provisions do not provide sufficient protection⁸, and recommend that the step-child/step-parent relationship be included as a 'related offence', as it eventually is, rather than being included as incest. Persuaded by the arguments of their commentators, however, the relationships of adoptive or former adoptive parent and child, excluded from the Memorandum's recommendations, *are* now included *as incest* in the Report's recommendations. This difference in the treatment of adoptive and step-children is justified on the grounds that unlike step-children adopted children are treated in law as if they were the natural child of the parent(s), and that they are more likely than step-children to form a part of the family from an early age.

⁸ They explain the situation as follows. If the girl is under the age of 13 or the boy under the age of 14, or if there is no consent, then the step-parent can, if taken on indictment, receive a penalty of life imprisonment. However, if the girl is between 13 and 16 and consents to intercourse the maximum penalty for the step-parent is 2 years. If a male step-child over 14 consents to intercourse the mother cannot be charged.

In the 1985/6 debates of Parliament and of the Standing Committee, it is this question of including step and adoptive children that dominates the discussions. The consanguineous relatives that are proposed in the Bill seem to be accepted without comment. Thus the arguments around the inclusion of relatives, and the image of which relationships are involved in incest is dominated by arguments around step and adoptive relationships. With the introduction of the Bill in December 1985 the proposals for adoptive and step-children are immediately presented as 'controversial'. The consanguineous relationships, on the other hand, are present as straightforward and as continuing a tradition of criminalising these relationships in Scotland:

[The Bill] leaves all these consanguineous relationships which are at present within the ambit of the law of incest where they are and where they have been for many years adoptive parent and an adopted child will be treated as incest. This may be a controversial issue and there may be different views about it. I say frankly that I had some reservations about it ... The new offences created are designed, of course, to protect [step-children] against sexual molestation. I say frankly that I am a little unhappy about some of the detail of the provisions in these related offences.'(9.12.1985, Lord Wilson of Langside).

These aspects of the Bill then dominate the parliamentary discussions of 1985/6. Looking for the 'typical' incest image depicted here is difficult, therefore, because the relationships under discussion are often theoretical possibilities raised in order to make a point about these clauses in the Bill, rather than referring to the typical incest situation. The references to the relationships involved in incest even within these examples of atypical cases, nevertheless construct a series of images of incest that are accepted as tenable examples by the House or Committee.

In arguing that step-children should be protected to an older age than proposed in the Bill, one speaker uses an implicit image of incest as older male/younger female as the 'obvious' form that attraction will take. He also implies that incest legislation is 'about' protecting the marriage relationship, thereby depicting incest within the system of alliance mode:

'It is fairly obvious that a 16-year or 17-year old young lady may be attractive to, and attracted by, a stepfather, and it appears astonishing to remove any sanction and so permit such a relationship which would be wholly destructive of the marriage between the step-father and his wife.'(9.12.1985, Lord Morton of Shuna).

This comment clearly places incest within the system of alliance, regarding incest as a threat to marriage relationships. In the next debate on the Bill, this same speaker

proposes an amendment that would retain step-parent/step-child relationships as incest, thereby criminalising this relationship as for blood relationships, with no age limits. Again, the justification is based on a problematisation of incest as a threat to the stability of family life. In doing so, he reiterates the depiction of incest as older male/younger female, and implicitly continues the tension around whether or not incest is 'about' blood relationships. The speaker argues that to suggest that

'if a man married a woman with a teenage daughter, no offence will be created if he has intercourse with the daughter, as long as she is over 16, would be to offend against generally accepted standards of behaviour.'(28.1.1985).

Lord Wilson of Langside asks the Lords to reject this amendment, arguing that the Scottish Law Commission, who had received opinions from various bodies, had decided that the incest laws were not the way to protect step-children. The next speaker agrees that step-parent/step-child sexual relations should not be criminalised. She refers to cases which the Lords had allowed through Private Bills⁹, and to the anomaly that would be created between the incest and marriage laws if the Bill currently going through parliament, which legalised (under certain conditions) the marriage between step-parents and step-children in English law, was to be passed. That is, that persons free to marry in England would be committing incest if they were to have sexual intercourse in Scotland¹⁰(Baroness Seear, 9.12.1985).

The image of incest as older man/younger woman is again referred to in the debates of the Lords when a speaker argues that although this is the 'natural' image that springs to mind, it is important to consider other cases that would be caught by the extension of the law to criminalise sexual intercourse between step-parent and step-child until the step-child is over 21 years of age. He argues

'There is a natural tendency to think of protecting young women from predatory males in a position of some dominance.'(28.1.1986, Lord Wilson of Langside).

In the Lords debates of 1985/6, all of the debates centre around the question of whether and how to include step-children. This makes it difficult to detect which relationships are seen to be involved in the typical incest situation because the speakers are

⁹ A private Bill is required in order to seek permission from Parliament to be married with someone with whom marriage is expressly forbidden by law.

¹⁰ Marriage (Prohibited Degrees) Act 1986 allows step-children and parents to marry as long as both are over 21 and the younger party has never before attaining the age of 18 lived in the same household as the other party and been treated by the other party as his/her child.

speaking about the 'periphery'. Nevertheless, within this context it does seem that the Lords construct an image of the typical attraction within the family as of the form older man/younger woman.

The situation is similar in the debates that took place in the House of Commons. Again, the discussion is dominated by arguments around the limits to be placed on the inclusion of the step-parent/step-child relationship. Again, the examples given construct an image of incest to be between an older male and a younger female.

The objection is raised that the marriage of stepfather/stepdaughter is prohibited but that this clause of the Incest Bill would allow them to have sexual intercourse once the stepdaughter is over 16 years of age:

'I am sympathetic to what the Bill is trying to do, but I find it impossible to support a law that would allow an individual to sleep with his stepdaughter over the age of 16 provided that the stepdaughter gives her consent ... is it right for us to write into law that it is in order for a stepfather to sleep with his stepdaughter and produce children, but not legally right for him to marry the 16-year old, or older, girl? If so, we are saying that fornication and adultery are preferable to marriage.'(Mr. Walker, 4.7.1986).

Further speakers also use the example of stepdaughter/stepfather when discussing the clause dealing with step-parent/step-child (Mr. Wallace; Mr. Allan Stewart 4.7.1986).

The older male/younger female construction of incest is reinforced later in the Commons debate when Ms. Jo Richardson refers to the 'normal incestuous relationships about which we hear' as involving a 'girl or young woman in what amounts to violence against her by a member of her family'. Depicting incest as a sexual danger in the family (in contrast with the discussions about incest and marriage), she tells the House

'Many women of all ages have told me of the pressures on them from their fathers, step-fathers or, in some cases, their elder brothers to develop a relationship. It can start at an early age when the young girl does not know what is happening...' (4.7.1986).

In the Standing Committee, by contrast, the first image of the relationships involved in incest, although making the same theoretical point about the age at which the step-child should be before sexual intercourse between a step-parent and step-child is no longer an offence, conveys an image of incest as step-mother/step-son:

'For example, a man in his late 30s might marry a woman of 18, and she and the man's 17-year old son might become attracted to each other. Why should consensual intercourse between them be a serious criminal offence?' (Mr. James Wallace, 11.6.1986).

Yet other examples used here again refer to older male/younger female, most often in the form of stepfather/stepdaughter (Mr. Wallace, p7 and p8; Mr Fairbairn, p12 and p13; Mr. Maxton, p14; Mr. Forsyth, p15; Mr. Walker, p16). A clear instance of this is evident in Mr Fairbairn's exposition of the purpose of the incest laws in which he only mentions incest cases of adult male/child, who would necessarily be female¹¹:

'The purpose of the law of incest is ... (First) ... to prevent abuse of positions of trust, where a child feels that it has to do what its father, uncle or grandfather says...' (11.6.1986, p14).

Summary: Combing these debates in order to highlight the relationships depicted by the speakers as typically involved in incest has proven a difficult task. This is mainly due to the fact that many of the relationships depicted are raised as exactly the opposite, ie. not typical but unusual relationships that the Members may not 'naturally' think of, in order to indicate a relationship that might be included in the Bill which the speaker deems as undesirable for the Act to include. Nevertheless, some conclusions have been reached.

It seems that in these debates incest has almost always been depicted as adult male/younger female. This was most clearly the case in 1903 where the proposed Bill only included relationships that conformed to this model. Yet even in the discussions of the carefully balanced 1986 Bill, the discussions seem to favour an adult male/younger female image (even though it must be noted that most of these comments referred to stepfather/stepdaughter, that is, to the 'related offence' and not incest per se, that is, not incest as defined by that Bill or eventual Act). It is not always the case however, that this depiction constructs incest as about child sexual abuse since the younger female may sometimes be adult for the speaker's point to be made, and the incest may also be depicted as consensual (for example where the speakers are discussing the possibility of the couple being married).

However, this is not the sole depiction of the relationships involved in incest. There are many different depictions of the relationships involved in incest throughout these debates. There are the depictions, in 1908 and the 1980s, of incest as something that adults engage in, as well as the notion of incest as involving at least a post-menses female upon which the inbreeding argument relies, and which, as discussed above, may alter the depiction of what incest is about by suggesting that incest is not about child protection (by that definition of adulthood). It is protecting children from sexual abuse that the Law Commission seem to understand their work to be about, although the 1980 Memorandum

¹¹ Because, as we have seen, 'homosexual' cases are not included nor seriously considered.

suggests that 'researchers' understand brother/sister incest (without giving ages) to be the most common form.

iv) Who is the victim of incest?

In this section, the question is asked: who, if anyone, do these speakers construct as the victim of incest? There is a certain amount of over-lap between this question and the previous. However, this over-lap is not complete, and this fourth question is an interesting one that illuminates the way in which the images of incest are constructed on the basis of different knowledges of what incest is 'about'. This is the argument to be expanded upon in Chapter Seven. I shall consider the debates chronologically.

As discussed above, the 1903 debates construct incest as a crime between an older male and a younger female or between a couple of the same age. An explicit construction of a victim of incest is less easy to trace. Indeed, where incest is constructed as an offence *against* anything, it is 'an offence not only against morality and decency, but against every instinct of human nature'(Lord Davey, 16.7.1903).

In 1908, similarly, the 'victim' of incest is 'morality'. One speaker's argument against criminalisation - that it will lead to blackmail - depicts incest as a consensual act with no victim except morality. He explicitly states, moreover, that incest is not to be seen in the context of rape:

'There was the further difficulty of people who threatened to make false charges in the case of an offence where both parties must be equally guilty ... This offence was not on the same lines as rape or anything of that kind. Here was a brother and half-sister living in one house and any person for reasons of enmity or of blackmail could give any information against them.'(26.6.1908, Mr. Rawlinson, Commons).

Although this speaker depicts incest as victim-less (excepting 'morality'), it is interesting that, in attempting to construct incest as different from rape, he implies that some might see it as similar to rape. The next speaker in the debate also puts incest on the terrain of (what one presumes is) rape, although also in order to make a non-feminist argument, when he argues:

'They knew very well that in regard to an offence of a similar character, charges were brought by young girls which had no foundation in fact. Relatives lived together under circumstances that no-one questioned, but a charge of this sort might be brought and there would be, as they knew, the very

greatest difficulty in furnishing any disproof.'(26.6.1908, Mr. Staveley-Hill, Commons).

That incest is similar to rape is also the image depicted by the first speaker in the Lords debates of 1908, when he states that 'as regards cases of rape and carnal knowledge of girls that came before the Home Office on petitions for remission of sentence, it was found that in no fewer than fifty-one out of 193 cases the criminal intercourse was incestuous.'(The Lord Bishop of St. Albans, 2.12.1908). Thus incest is constructed as a category of rape, and the victim equivalent to the female in a rape. This is further confirmed in the telegram from the Lord Chief Justice, quoted above, which refers to the 'frequency of assaults by fathers on their daughters.'(2.12.1908).

A child as the victim is the depiction offered by another speaker (quoted above) when he argues that a large proportion of the cases could be dealt with under the Cruelty to Children Acts (The Earl of Crewe, Lords, 2.12.1908). The children are not given a sex, however, it is simply 'children' who are victims.

As noted above, the inbreeding arguments for criminalising incest are introduced in 1908. With these arguments comes the construction of a new victim of incest: the potential off-spring. The genetic argument also carries the connotation that the health of the population as a whole is in danger, such that 'the population' is the victim.

'he had known of instances producing no less than three or four children of weak intellect, idiots and imbeciles.'(Mr. MacLean, 26.6.1908).

'It was not merely the case of a moral offence affecting grown-up people, but it might entail consequences of a disastrous kind on the off-spring which sometimes followed from such intercourse' (The Under-Secretary of State for the Home Department, Mr. Herbert Samuel, 26.6.1908).

'there are, as the result of intercourse between the various people mentioned in the Bill, offspring upon whom the punishment chiefly falls.'(The Lord Steward, Earl Beauchamp, 2.12.1908).

In these early debates, therefore, there are different constructions of 'the victim' of incest. This discussion has drawn out four of these: no victim or the noncorporeal victim 'morality'; the victim as the female as in rape, although this construction is presented negatively through statements that this is not what incest is 'about', as well as positively in the Lords debates of 1908; the victim as a child, of whichever sex, involved; and the victim as the potential off-spring.

Turning to the 1980s, who was constructed as the victim there? The Scottish Law Commission's 1980 Memorandum places emphasis on the deleterious genetic effects of incest in order to justify its decision to retain incest as a crime. It argues that intercourse between related persons 'should be prohibited because the offspring of such persons are more liable to exhibit physical and mental abnormalities.'(1980:22). The genetic argument here, therefore, as in the earlier debates, has an image of the off-spring, as the victim of incest.

A more predominant construction of the victim of incest in the Memorandum and the Report, however, is of the family as the victim. There are here two different sorts of constructions. First there is the notion that the particular families in which incest occurs are victims of something either outside any individual's responsibility or as a collective collusion. As mentioned above, the authors draw on Maisch (1973), who argues that incest is often preceded by 'disorganisation' in the family, which he regarded as illustrated through expressed hostility in the family, constant tension and interpersonal indifference between the married couple (1980:32). There is also the suggestion, presented through the words of Machotka et al (1967), that incest is 'made possible and later perpetuated by the collusion of several members of the family'(1980:32). The mother is singled out for criticism in the Memorandum: 'The mother's collusion in the incest behaviour means that she is not fulfilling her basic social role to protect and 'socialise' the child.'(1980:35). There is also an explicit construction of the younger female involved in incest not as a victim but as a consenting partner. The Memorandum, whilst not explicitly agreeing with it, quotes at length from Allen (1969):

'once the behaviour becomes known to others in the family, the relationship is upset, and 'the natural horror' expressed by those others produces a strong sense of guilt in the girl as the result of which she plays the part of the victim of the relationship in which *she had not only endured but enjoyed*.'(1980:35, italics added).

These arguments regard incest as either or both a cause and a symptom of problems within the particular families in which incest occurs. Either way, when incest occurs it is the family as a whole that is the victim. No one individual is considered victimised by the incest, although the family as a whole may be constructed as victims of their own 'disorganisation' or dysfunctional lives.

Secondly, there is the notion that the Family as an institution is the victim of incest. That is, that incest threatens not just the particular family in which it occurs, but the tradition of the institution of the Family. The authors of the Report wish to strengthen the Family through the support they argue the retention of incest as a crime will give to it.

They state: 'we are confirmed in our opinion that it should be retained if by doing so the solidarity of the family structure will be maintained and strengthened.'(1981:10).

There are therefore two constructions of the family as victim, one relating incest to a problem of the particular families, the other more abstract, referring to the Family as a social institution. These two constructions draw on different knowledges of incest. The first draws upon psychological literature (such as Maisch), whereas the second draws on sociological analyses of the incest taboo as a fundamental tenet of the nuclear family (such as Parsons). In the following quotation both of these exist alongside each other:

'If incest gives rise to psychological or other direct harm, or results in a breakdown of trust among the members of the family, to that extent, incest must be regarded as attacking the solidarity of the family. But even if such consequences did not arise, it must be accepted that incest may in many cases result in disruptive rivalries and that its prohibition will therefore help to protect the fabric of the family.'(Report, 1981:9).

Children in general are also constructed as the victims of incest. The Memorandum depicts incest as an abuse visited upon a female child, and it displays the understanding that consent can be attained by various means. The authors state that incest can be sustained by 'threats, gifts, isolating the child', etc. This would seem to depict the female child as the victim of incest, and this image is confirmed by their statement, in contrast with the statements of 1908, that

'The quality of the offence is often indistinguishable from that of rape. When consent may not be completely absent, it is difficult to distinguish between threats, duress, acquiescence and willingness in a situation when the man is in authority over the child.'(1980:69).

It is, moreover, a girl-child who is depicted as the victim of incest because most of the studies forming the basis for the Memorandum's chapter on the psychological consequences of incest refer to studies on girls who are survivors of father/daughter incest (eg. Benward and Densen-Gerber 1975), although the authors do add a footnote at one point which warns:

'It should be remembered, however, that in some cases the girls do actually encourage the breaking of the taboo.'(1980:33).

Thus the Memorandum is ambiguous in their representation of the female child involved in incest. The victim of incest is regarded in some places as a girl-child, but only cautiously: she may also be the temptress. As the preceding section showed, the Report is mostly concerned with the protection of children.

There is therefore, no consistent image of the victim of incest in the Scottish Law Commission's writings. These different images are connected with the knowledge sources upon which they base their work. Whether incest is presented as having a victim at all depends upon the ways in which the Commission use the knowledges at their disposal. As in the earlier debates, the victim of incest can be the female child, all children, or the potential offspring. But there are also significant differences from the earlier debates. First, the notion of morality as the only victim of incest is not voiced in the Commission's writings. Secondly, the family as a whole is now constructed as the victim of incest. This exists alongside a construction of the Family, as an institution, as the victim of incest.

This cluster of images of the victim of incest continues into the Lords debate of 1985. Although speaking of the clause relating to step-children, and not incest per se, the inclusion of step-children is presented as 'to protect them against sexual molestation'(Lord Wilson of Langside, 9.12.1985), constructing incest as a problem of sexual molestation in which children are the victims. Quoting the Law Commission's Report¹², one speaker argues that a step-child should be protected beyond the age of sixteen. The speaker argues that on reaching the age of sixteen the step-child is still constrained by the situation of being a child in the family. The victim of incest is constructed as the step-daughter or step-son:

'it is an open question whether in a family one can usefully talk in terms of a daughter's or son's consent, particularly if one takes into account that the young girl in an incest situation is subject to a completely different set of conditions regarding defence, tolerance and participation from the child or maturing girl who meets a completely unrelated adult aggressor or a transient, perhaps even a known sexual partner.'

...It also discusses how consent to intercourse can be obtained by various means and devices.

I would urge that it is unreal in this situation to suggest that a girl or a boy of 16 who has been brought up in this situation should suddenly have a free and totally adult approach to somebody whom she has probably regarded, or may have regarded, as her father'(Lord Morton of Shuna, 28.1.1986).

The next speaker, however, argues that the proposed amendment be rejected, and the age stay at sixteen years. He reminds the previous speaker that they are discussing 'consensual intercourse between people who are both, in the eyes of the law, old enough to consent'(Lord Wilson of Langside, 28.1.1986). The speaker is calling attention to the fact that if consent were absent, the step-father could be charged with rape. Incest on the other hand, criminalises sexual intercourse regardless of consent.

¹² Which, although it recommended not to include step children over the age of sixteen, was aware of the difficulty of the issue of consent to which this speaker draws attention.

In their discussions of this point the speakers construct different images of incest and its victim. Cases are depicted which should not in the speaker's view be criminalised. In the following quotation, for example, the speaker is raising the question of whether sexual relations between these particular instances of related people should be criminalised. He implicitly raises this question of 'who is the victim?' in this 'related' offence and also the underlying question of 'what is wrong with incest proper?'

'It is easy to get excited about the need to protect innocent young girls, and so on, against the malpractices of the male species. But consider the other side of the coin. Consider a woman in her thirties who marries but soon separates from a man in his early twenties.

The man and the woman's 17-year old daughter fall in love. They have sexual intercourse, not thinking there is anything wrong in it. There is no blood relationship at all. ... It is hard to see why the man in that circumstance should be guilty of a criminal offence.'(Lord Wilson of Langside, 28.1.1986).

That the whole family is the victim of incest is suggested when another speaker argues:

'[Incest] cases ... usually illustrate a family which has been unhappy for a very long time. It usually seems to be that it is only after several years of an incestuous relationship that the matter comes out into the open.'(Lord Morton of Shuna 9.12.1985).

Although morality is not now as explicit as the 'victim' of incest, there are still comments that construct incest as attacking a common morality. One speaker quoted above, refers to the 'repugnance' at the idea of incest that is 'surely as strongly and as widely felt' as it was in 1567, and states that 'I do not find any of these issues, the moral issues and the other issues which arise, altogether simple'(Lord Wilson of Langside, 9.12.1985 and 28.1.1986). Another suggests that the Lords 'may hold deep personal and moral convictions' on the topic of incest as 'important moral and religious questions arise'(The Lord Advocate, 9.12.1985).

As we have seen, much of the debates centre on the relationship of the Incest Bill to the prohibited degrees contained in the Marriage Acts. Although these concerns are with the theoretical possibilities that may be the exception to the rule, the close interconnection of incest with marriage in these debates construct an image of incest as like marriage, and therefore as non-abusive, and with no victim.¹³ It also constructs incest as a question of alliances.

¹³ As had a work quoted in the Law Commission's Memorandum which states 'the behaviour tends to continue with the girl becoming more and more acquiescent until a

In the Standing Committee, much of the discussion, again, is concerned with the relationship of the marriage laws to those of incest. Thus the possibility of the two people involved in incest marrying is implied, and consequently incest is depicted as consensual and as without a victim. For example, one speaker states:

'it sticks in my craw that the stepfather or stepson would not be able to marry the girl. ... as the Conservative party very much believes in the family and the institution of marriage it is ironic that we should be asked to endorse this principle [that sexual intercourse between step-parent/step-child cease to be an offence when the both are over the age of sixteen, although they cannot be married until the age of twenty-one].'(Mr.Forsyth, 11.6.1986).

There is also, however, a depiction of incest as possibly involving abuse and violence. One speaker states

'It seems that it is only when it is a matter of abuse rather than consent that one would generally expect a prosecution to arise. If two people are having intercourse by consent, the only way a prosecution arises is either if another member of the family cliques¹⁴, or if one of the parties who is allegedly consenting, but is not, because the step-father says 'you get into bed or I'll beat your head off', eventually complains to the social worker'(Mr. Fairbairn, 11.6.1986).

This statement depicts a dual image of incest. First as a consenting relationship with no victim, but secondly as an abusive situation in which a female is the victim. The dual image of incest is further stressed, with different rationales, and correspondingly different images of the victim of incest, as the speaker argues that the purpose of incest laws are twofold. First, he argues it is to prevent abuses of position or trust, 'where a child feels that it has to do what its father, uncle or grandfather says', which presents incest as abusive, and a female child as the victim, and 'secondly, it is to prevent genetic deterioration'(Mr. Fairbairn, 11.6.1986), which presents the potential offspring as the victim of incest.

The victim of incest as a female child (step-daughter) is the depiction presented by another speaker in the Committee, who argues

'There are other pressures to give consent much more subtle and less easy to identify, for a step-daughter living under the same roof, with nowhere else to go and no job.'(Mr. Forsyth, 11.6.1986).

relationship almost comparable to that of a normal marriage is established'(Allen, quoted 1980:35).

¹⁴Note the way in which it is assumed the other family members would know about the incest.

In the Commons the clause relating to step-children is again at the centre of discussion. The depiction of incest as consensual again coexists alongside a depiction of a female as the victim. The objection that the step-parent and step-child will not be committing an offence if they are both over sixteen and consent, but that they will not be allowed to marry is a central debate. With this argument, the image of incest as consensual is predominant. Yet there is also the depiction of incest as non-consensual, and the (female) child as the victim:

'it is reasonable to envisage circumstances in which, because of the conditions in the home, the step-daughter has to comply with the invitation or the order - depending on how one views it - to get into bed with the step-father.'(Mr. Walker, 4.7.1986).

In the Commons debates, there is also a depiction of the off-spring as victim. It has been suggested above that the genetic argument introduced the potential off-spring as the victim of incest, because of the possibility of genetic malformation. In the 1986 Commons debates, however, the off-spring is seen to be a victim not because of genetics, but because of the reaction she or he will receive from others. The offspring is depicted as a potential problem child:

'Does anyone really believe that children conceived in this way would not at least have a real prospect of becoming what is known as problem children ... Does anyone believe that bastards conceived between a stepfather and a stepdaughter aged 16, 17 or 18 can hope to be anything other than, at best, a curiosity to other children and other members of the community where they all live?'(Mr. Walker, 4.7.1986).

The depiction of the female as victim of incest is most clearly expressed by the following speaker, the only woman to speak in the Commons debate, and the only speaker to present an image of incest in accordance with the feminist depiction:

'We should all welcome the fact that now both men and women are beginning to discuss these problems, which are particularly difficult for the girl or young woman involved in what amounts to violence against her by a member of her family. I am talking about the normal incestuous relationships about which we hear'(Ms. Jo Richardson, 4.7.1986).

Summary: The victim of incest, therefore, is depicted in several different ways in these debates. In 1903, with the arguments against criminalisation, there is the suggestion that incest has no victim or is only an offence against morality. In 1908 victims are variously constructed as the female (as in rape), 'morality', a child, and the potential off-spring through the genetic arguments against incest.

The work of the Scottish Law Commission in 1980/1 also constructs various different victims of incest. Although a female-child is often the implied victim, the Law Commission also construct other victims. With child protection high on their agenda, they continue the construction of children as the victims of incest, and they also continue the genetic argument, with the potential off-spring as the victim of incest. A predominant image, and one which did not have a place in the earlier debates, is the family as a whole as the victim of incest. There is furthermore, the related image of the Family, as a traditional social institution, as the victim of incest. The debates of the two Houses and the Standing Committee in 1985/6 also present this same mixture of victims of incest.

The different constructions of the victim of incest are related to the different knowledges and ways in which incest is understood. The feminist understanding of incest argues that a female child is the victim of incest because incest usually takes the form of sexual abuse by an adult male of a related female child. In these debates, there are other understandings of what incest is 'about', such as the problematisation of incest as a problem of particular families, so that that family as a whole is constructed as the victim of incest. The knowledges and depictions of the victim are not tied together in any rigid sense, however, because the victim can have another knowledge or understanding of incest 'overlaid' on top of the original knowledge. In the 1980 debates, for example, the off-spring as victim, which had previously been connected with the genetic argument, is accorded a new knowledge or problematisation, when it is argued that the off-spring is the victim, not for reasons of genetic risk, but because it is more likely to become a 'problem child'.

Conclusion

It would be an understatement to conclude that there are a number of conflicting images of incest constructed through these debates. The several different images of incest constructed in these debates illustrate the difficulty in attempts to depict the Law as monolithic. By the same token, it is difficult to regard the law as consistently masculine or male, and nor are any of these images straightforwardly masculine or male. Nevertheless, despite this collection of diverse images, patterns have emerged. By way of conclusion, I shall recap on the four questions by which I have traced the image of incest constructed in these debates, before drawing out the more general arguments that have been made in this chapter and which set up the questions for the next.

The first question - 'does incest happen?' - revealed that incest was never straightforwardly denied by the speakers. In the earlier debates the occurrence of incest was placed within geographical boundaries. By contrast, in the later debates, it was argued that incest was widespread, but that the extent of the offence could not be known. This argument constructed incest as a sexual danger, something to be watched for. The second question - 'what acts constitute incest?' - illustrated the way that the penetration of the vagina by the penis has always been an assumption of the debates, assumed before those knowledges on which to base an argument were articulated. The third question - 'who is involved in incest?' - clearly illuminated the variety of images of incest that the speakers construct through their debates. For the most part, however, in both the earlier and the later debates, incest is spoken of as involving an older man and a younger woman. Caution must be warned for those who would see this as a feminist victory, for although compatible with feminist knowledge, this image of incest does not necessarily reflect an acknowledgment of incest as a gender issue. Nor does the term 'younger' necessarily imply 'child'. (Indeed, who counts as a child is an issue, especially clear when the speakers debate the age to which step children should be included in the Act.) There are, moreover, many other images of the relationships involved in incest. In both early and later debates, there was some controversy over whether to include affines in the list of forbidden relatives. In early debates, the argument is to include in particular step daughters but also other affines, including in-laws, that is, a wider circle of related family members. In the 1980s debates, the arguments are around step-children. The fourth question - 'who is the victim of incest?' - shows how the victim of incest can be very differently constructed. In both the early and later debates, the victim can be a child, the off-spring or a non-corporeal 'morality'. In the later debates incest as an offence against 'morality' or at least against some notion of common opinion is still articulated, but new knowledges also construct new victims: psychological sources have 'the family' as victim, whereas sociological ones have 'the Family' as an institution as the victim of incest.

In this exploration of the images of incest constructed through the debates (especially questions iii and iv), I have also begun to point toward some more general arguments that relate to the discussions of the chapters preceding this one. These arguments centre around the observation that the conflicting images of incest discussed in this chapter relate clearly and closely to the knowledges that inform them. The following table shows how the images of who is involved in incest and the victim of incest relate to these knowledges as they are articulated in these debates. As noted above, the victim is not always connected with these sorts of knowledges. Some degree of flexibility must be

allowed in reading this table. The table is presented merely to show how different images are often different because they are informed by different knowledges.

<i>Who's Involved</i>	<i>Victim</i>	<i>Knowledge Base (and experts)</i>
Every family member	The family	Psychological studies (psychologists)
Any related couple	The Family	Sociological theory (sociologists)
Adult/child	Child	Charity/Social work (charity/social workers)
Male adult/young female	Girl-child	Crime statistics/psychological studies (courts, psychologists)
Adults	The offspring	Inbreeding/genetic arguments (genetic scientists)
Any related couple	Morality/society	The existence of the incest prohibition (anthropologists)

It follows from this elucidation of the various knowledges that are articulated in the debates that the process of creating the law of incest is not simply the articulation by the members of parliament of one perspective on what incest involves. The debates are a meeting point for several different knowledges of incest. Although there is a male monopoly on these debates, one that is complete in the earlier debates, there is not a singular perspective that can be regarded as either upholding men's position of power, nor denigrating women's. The law of incest may work to maintain a family in which men are dominant, but it also works to punish men who abuse women. It is therefore difficult to regard these debates as straightforwardly biased in outcome. The process of law creation is more complex than the articulation of a 'masculine' perspective on incest. There is no singular perspective and nor is there one knowledge which is successful in getting itself onto the statute books. Thus I maintain the position advocated in Chapter Five, where it was suggested that law be regarded as the site of the operations of power/knowledge. It is charting the workings of power/knowledge at the level of law creation which is my task here. This general argument will be the basis of the following chapter.

This chapter has illustrated, furthermore, that the ways in which incest is spoken about can indeed be conceived of as placed on a continuum between those ways that link incest to the system of alliances and those that regard incest as a sexual danger, something to watch out for in the family. The different knowledges as presented in the table above can be seen as discursively placed at various points on this continuum. At one end, for example, there is the psychological studies which regard incest as a sexual problem for some particular (dysfunctional) families. At this end too, there are the knowledge from social work and crime statistics. At the other end there are those knowledges which lay stress on the incest prohibition and the family structure, such as the anthropological and sociological knowledges. As expected from discussions of Chapter Four, there are also statements and knowledges which lie somewhere in between.

These debates are in a sense simply a site at which these various ways of speaking about incest are rehearsed. But the law is also more than this because the law itself is a part of the juridico-discursive mode. Part of my argument here is to show how different forms of knowledge, power/knowledges of the deployment of sexuality, are at work at the site of law. Yet it has also emerged in this chapter that the speakers draw upon the argument that an incest prohibition exists and that this statement of an incest prohibition (or society's morality, common 'repugnance' etc.) carries some weight in the argument for continued prohibition. The speakers speak as if they were responding to the incest prohibition (in the 'what would they say' mode). However, because the eventual Acts of Parliament are of the juridico-discursive model - 'thou shalt not' - the law itself is a part of the incest prohibition, a discursive command with the means to exercise power in our society. The incest law cannot be theorised as merely the coming together of knowledges which construct sexual dangers around the family. I would suggest that the law's binary licit/illicit line doesn't merely respond to or mimic the incest prohibition: it is an important part of it. Thus it seems that the debates on incest law presuppose and recreate the incest prohibition, of which the law itself was already a part.

These arguments are the guiding arguments of Chapter Seven, in which I approach the debates directly through the knowledges which surround and construct the object incest as a category for criminal law.

Chapter Seven

The Parliamentary Debates (II): The Problem of Incest

'the honourable and learned Member ... began to sound as if he was saying that incest is all right provided that both sides consent, and that we should prosecute only if there is an abuse. That is not the view of the law' (Mr Maxton M.P. in 2nd Scottish Standing Committee 1986:13).

The question 'What is wrong with incest?' is one that has been asked by lawyers, criminologists and philosophers (Neu, 1976; Wasoff, 1980; Mason, 1981). To some extent, it also relates to questions in anthropology and sociology concerning the origin and functions of 'the incest prohibition' (such as the theories of Levi Strauss, 1969, or Parsons, 1954) insofar as the prohibition is often theorised as avoiding a harm or problem, eg. for Parsons, the incest prohibition allows for successful socialisation within the family, thereby avoiding the problem of no or poor socialisation. This chapter considers the ways in which incest is constructed as a problem in the parliamentary debates of the beginning of the century and of the 1980s. In other words, it asks: what is wrong with incest according to these speakers?

As indicated in the preceding chapter, it will be argued that there are different sorts of knowledges surrounding and producing incest as a problem, such that the object 'incest' is repeatedly pulled onto different agendas. The last chapter suggested that the array of different images constructed in the debates indicate that there are different knowledges of incest informing the discussion. These knowledges fundamentally 'problematise' incest differently. Foucault argued that this notion of 'problematism' was central to all his work from Madness and Civilisation (1967) onwards (1988:257). It is certainly a central dynamic of THS where 'sexuality' is the 'object' under scrutiny. He explained it thus:

'Problematism doesn't mean representation of a pre-existing object, nor the creation by discourse of an object that doesn't exist. It is the totality of discursive or non-discursive practices that introduces something into the play of true or false and constitutes it as an object of thought (whether in

the form of moral reflection, scientific knowledge, political analysis, etc.')(in Kritzman, 1988:257).

What I am doing in this chapter is investigating the way in which incest is problematised in the debates. Although it is at no point acknowledged that there are different understandings of the wrong of incest entering the debate, I want to conceive of the debates as the site of a 'discursive battle' over incest. The different problematisations of incest each present their truth of incest, their understanding of what the problem of incest is, as they enter into competition, or into contradiction, with each other in a battle to gain status as the Truth of incest through 'the stamp of legal authority' (Smart, 1989).

In pursuing this analysis, it becomes clear that it is the *specificity* of incest that is being discursively constructed. This takes place through the underlying question: 'why does there need to be separate legislation on incest?' Thus although no speaker asks this question directly, it is argued in this chapter that the analysis of these debates necessarily entails, or becomes, a study of how the place of incest as a *specific* crime is discursively 'mapped out'. Some problematisations of incest construct incest as a specific wrong in a way that others do not. The inbreeding argument, for example, constructs incest as ^aspecific problem (because it can have deleterious effects for the offspring) in a way that a problematisation of incest as child sexual abuse does not (because it places it on a par with sexual abuse outside the family). The criminalisation of incest 'needs' incest to have a specificity in order for the legislation to justify itself. In exploring the problematisation of incest, therefore, I will also explore the discursive construction of incest as a specific crime.

As a study of the processes of law creation, the chapter illustrates the dependence of legal discourse on other forms of knowledge. A general question that this chapter can answer is how successful feminist knowledge of incest has been in this process. Although there is no one feminist position, as Chapters Three and Four have illustrated, there is agreement to the extent that feminists have argued that incest is a problem, it is wrong, because it is a form of violence against women and a form of child sexual abuse. How does this analysis of incest bear on the debates? The conclusions of this chapter will suggest that the efforts of feminists to get their definitions of incest heard and accepted does not involve a battle with the Law, as if it were a monolithic and integrated opinion. Rather, feminist knowledge on incest has to 'compete' with other truths of incest.

In this chapter I trace the ways the different truths, the different problematisations of incest weave in and out of the debates. Many of these problematisations are based on 'knowledges' in the sense that there is a body of writing,

studies and 'experts' that accompany them. They are, moreover, bio-political knowledges, simultaneously located at both poles of bio-power. First, they are based upon, and are the result of, the operations of (disciplinary) power and secondly, they are being used in the context of governing the nation as 'population', used in a normalising fashion.

The chapter considers furthermore how these ways of speaking relate to the concept of the continuum, discussed in Chapter Four, a continuum which runs between ways of speaking that link incest with the kinship system (system of alliances) and those ways of speaking that link it with sexual dangers/social problems (the deployment of sexuality). It is not the case that all knowledges are all placed at the 'deployment of sexuality' end of the continuum. Bio-political knowledges may speak of incest in relation to the system of alliances. As I consider the different knowledges, I will discuss how they relate to the continuum. Following the arguments of Chapter Four, a particular question is how the concept of 'the incest prohibition' functions in the debates.

Although my interest is primarily in the distribution of knowledges over space rather than over time, I have decided to divide the chapter between the early English debates and the later Scottish debates. I have done so because there are different sorts of knowledges and arguments used in the two periods such that tracing the knowledges ^{across both periods} would not highlight the disappearance of a way of speaking nor the emergence of another. Furthermore, tracing the different ways of speaking through both sets of debates might risk conflating arguments that mean different things in the two different periods, drawing a false continuity in ways of speaking. Moreover, the two sets of debates, as explained in Chapter Five, have not been chosen in order to draw such a trajectory, but because they are the debates which formed the present laws of incest in England and Wales (now incorporated into the 1957 Sexual Offences Act) and in Scotland (for incestuous acts committed 1986 on).

The Early Debates: 1903 and 1908

Reading both the 1903 and the 1908 debates it is immediately apparent that incest is always already wrong. That is, the debates are premised on the wrongness of incest. Disagreements within the debates were not therefore over whether incest was an offence, but either over the details of the Bill, such as whether it covered the correct relationships, or over whether the criminal law was the best way to deal with the wrong

of incest. Many speakers state their objection to incest, constructing it as an indisputable wrong, whether or not they are in favour of the Bill:

'he did not think that hon. Members would imagine that such crimes should not be severely punished.' (Colonel Lockwood, 5.3.1903, Commons).

'On the part of everyone there must be a great sympathy with the feeling behind the introduction of the Bill; but it was a Bill which required very careful consideration in regard to its provisions ... there were cases in which a most laudable desire to check these evils might possibly lead, by methods of administration, to other and graver evils.' (Attorney-General, Sir Robert Finlay, 5.3.1903, Commons).

'though he felt it was unpopular to oppose a Bill of this kind in the House, he ventured to submit that before this offence was made a crime the House should see to it that they did not take any step that might do more harm than good.' (Mr. Rawlinson, 26.6.1908, Commons).

'not in this House, nor I should think anywhere in the country, are there two opinions as to the desirability of reducing the mischief [aimed at in this Bill]' (Earl Russell, 2.12.1908, Lords).

Since no speaker questions the opinion that incest is wrong, the rationale behind this position is never made explicit. Nevertheless, the debates that take place around other matters reveal the different ways in which incest is problematised. Studying these problematisations involves looking at the different terms used, the different contexts into which incest is placed as well as the explicit arguments as to why incest is wrong.

As discussed in Chapter Six, the 1903 debates involved forms of 'boundary making', making incest a problem of geography, spatially located. Incest is related to the 'rural districts' (Colonel Lockwood, 5.3.1903, Commons), as well as to the bigger cities (Earl of Donoughmore, 16.7.1903, Lords). This geographical placing of incest can be regarded as problematising incest as on the one hand, a primitive behaviour, as have many academic analyses of the incest prohibition, and on the other, as an urban phenomenon associated with modernisation processes that brought the working classes to the cities where housing was inadequate, as did the 1888 Royal Commission on the Housing of the Working Classes. These assertions may not have been therefore, purely speculative on the part of the individuals involved. They drew upon bio-political knowledges, knowledges which involved the exercise of power in their formation, especially disciplinary techniques of surveillance and examination. On the one hand, academic work, such as that quoted by Huth (1875), presented certain isolated communities as the ones in which incest was practised (see below). On the other, official and unofficial investigations associated incest with housing and city life. The Royal Commission on Housing carried out extensive investigations of a clearly disciplinary

nature, calling 'witnesses' from the spectrum of disciplinary agencies (eg. medics, social reformers, charity workers) who revealed the practice of incest. Thus, in these early debates, incest is a geographical problem being either a subcultural practice of isolated communities or another sexual danger in the urban life of the working classes. These short phrases that place incest geographically may be indications that bio-political knowledges are constructing the speakers problematisation of incest.

One word that is used to refer to acts of incest in the 1903 debates is 'unnatural'. In the Lords, it is argued:

'The object is to punish as a misdemeanour what is one of the most horrible and *unnatural* crimes conceivable.' (Earl of Donoughmore, 16.7.1903, Lords, italics added).

'no one can deny that an offence not only against morality and decency, but *against every instinct of human nature* is one which ought to be dealt with by the criminal law if such a course were expedient.' (Lord Davey, 16.7.1903, Lords, italics added).

That incest is 'against nature' could be taken as a statement from within several different problematisations of incest depending on what is meant by the term 'nature'. Foucault (1981) argues that 'crimes against nature' is an 'old' way of talking about sexual behaviours that were non-conforming. The term 'unnatural' refers to one side of a binary division natural/unnatural. As such, it is associated with juridico-discursive ways of speaking about sexuality rather than those ways of speaking associated with the deployment of sexuality. In the later debates incest is constructed as a problem of certain types of individuals or families, a pathological and 'perverse pleasure' but one which can be understood with reference to psychological studies and theories. In this earlier problematisation however, incest is something that was incomprehensibly against all human instincts.

In contrast to the term 'unnatural', used in 1903, in the 1908 debates incest is repeatedly referred to as a moral offence. This was not an argument especially marked in 1903, but in 1908 it is prominent.

'They might thrash and imprison people, but they would not make them good. There were appointed ways of dealing with immorality, and that was to try and lead people kindly by preaching religion and morality to them.' (Mr. Lupton, 26.6.1908, Commons).

'these offences against morality had never been made a crime ... If the criminal law were brought in to deal with crimes against morals they would be met at every turn with the difficulty that it was adults who committed these immoral offences.' (Mr. Rawlinson, 26.6.1908, Commons).

These speakers suggest that because incest is a moral offence, criminalisation is not the appropriate way of dealing with it: 'they should better deal with the matter more by education than by extending the offence and making it criminal.' (Mr Rawlinson, 26.6.1908). This construction of incest as a moral problem is linked by these speakers with the argument that education and/or religion would erode the practice of incest through its civilising force. Thus the construction of incest as 'immoral' is linked, as was the construction of incest as 'unnatural', with primitive behaviour, 'outside' culture. Whilst the problematisation of incest as a moral offence was articulated by those against criminalisation, some speakers were in favour of making this 'moral offence' a crime:

'the whole sense of the community was in favour of making this grave moral offence a crime. Out of every 1000 people, 999 were under the impression that it was a crime.' (Mr. MacLean, 26.6.1908, Commons).

The problematisation of incest as a moral offence, therefore, is voiced both by those for and those against the Bill. As Chapter Six argued, this problematisation refused incest a victim other than a collective moral code. In an argument against the Bill, incest is spoken about as similar to adultery since both were moral offences. This construction of incest as a moral offence denied incest any specificity by placing incest on a par with adultery. This 'similarity' was then used to argue that criminal law was not the way to deal with incest.

'this offence was in precisely the same position as other moral offences, and that if they made this a crime it logically followed that they must make adultery a crime in England.' (Mr. Rawlinson, 26.6.1908, Commons).

Incest was already related to adultery in a different way because as mentioned in Chapter Five, 'incestuous adultery' by one's spouse was given as a reason for granting divorce by the Matrimonial Causes Act of 1857. When the question of whether to include step-daughters in the Bill is raised (by Mr Galloway, 26.6.1903, Commons), one of the speakers makes reference to this partial recognition of incest in law.

'Mr. Galloway ... desired in Clause 1, page 1, line 7, after the word 'daughter' to insert the word 'step-daughter'. He hoped the amendment would be accepted because, in his belief, the experience of the Bill would show that these were the most serious class of cases. ...

The Solicitor-General (Sir Edward Carson) asked upon a point of order whether it was within the purview of the Bill to make 'incest' that which was not incest at present...

Mr. H.D. Greene ... asked if the hon. and learned Gentleman had looked at the table of consanguinity and affinity in the prayer-book, or the Matrimonial Causes Act.' (26.6.1903, Commons).

The reference to the Matrimonial Causes Act is made therefore in an argument that relationships with affines were included as incestuous in that Act and should, by way of consistency, also be included in the Punishment of Incest Act. The relationship of the category 'incestuous adultery' to marriage laws is explained by a further speaker:

The 27th Section of the Matrimonial Causes Act of 1857 provided that a wife should be able to obtain a dissolution of her marriage on the ground among others of incestuous adultery on the part of her husband. All the other offences named in that Act were already punishable in law, and they wanted to maintain the strength of the law, and they wanted to show that this country regarded these matters as very serious matters. It was desirable that these offences, whether committed with persons related to the husband by consanguinity or only by affinity, at all events during the lifetime of his wife, ought to be treated with equal gravity. *Incestuous adultery had been defined as adultery committed by a husband with a person with whom, if his wife were dead, he could not wed, owing to his relationship with her either by consanguinity or affinity.* (Sir William Tomlinson, 26.6.1903, Commons).

This speaker is drawing attention to the fact that marriage with affines up to but not including first cousins was still illegal (Wolfram, 1983), so that relationships of affinity would have had to have been included in the Incest Act if Parliament wished to avoid a situation in which sexual intercourse between a couple was permitted but their marriage was not. This is a juridico-discursive way of speaking about incest, referring it to previous laws which list who is forbidden as a marriage partner. It is a problematisation of incest as a problem of extra marital sexual activity. By relating the argument to the inclusion of 'incestuous adultery' in the marriage laws, moreover, incest is pulled onto the site of adultery, denying it its specificity by making it a special case of the wider category. After Mr. Tomlinson, above, further speakers argue that his suggestion would make the scope of the Incest Act too wide, especially in view of the proposed changes to marriage laws that were currently being sought.¹ It is argued, moreover, that 'the country was not yet ripe for making adultery punishable as a crime' (Mr. H.D. Greene, 26.6.1903, Commons). The problem of incest is therefore very closely related in 1903 to the marriage laws and to the problem of adultery. What is wrong with incest according to this problematisation therefore is that it is a form of adultery, an attack on the institution of marriage. As such this way of speaking clearly relates incest to the system of alliances.

The reference to the prayer book (H.D. Greene, 26.6.1903, Commons, above), furthermore, problematises incest as a wrong against religious codes of conduct, and, by

¹ By the 1986 Marriage (Prohibited Degrees) Act a step parent and child were allowed to marry as long as both parties are over the age of 21 *and* the younger party had at no time before attaining the age of 18 lived in the same household as the other party and been treated as the child of that party.

extension, as a wrong against God's will. This is also clearly a juridico-discursive way of talking about incest, making reference to a binary (licit/illicit) command of 'thou shalt not'.

In 1908 there are two further problematisations of incest that were not articulated in 1903. The first of these, as mentioned in Chapter Six, is the problematisation of incest as a problem of inbreeding. This constructs incest as wrong because of the potential deleterious effects on the health of the offspring is articulated by four speakers.

'Mr. MacLean of Bath said ... he had known instances producing no less than three or four children of weak intellect, idiots and imbeciles. The cases were of the most grave kind.' (26.6.1908, Commons).

'it was not merely the case of a moral offence affecting grown up people, but it might entail consequences of a disastrous kind on the offspring which sometimes followed from such intercourse and from that point of view society had a special interest that should lead to steps being taken to put a stop to it.' (The Under-Secretary of State for the Home Department, Herbert Samuel, 26.6.1908, Commons).

'In a certain number of crimes of a similar character it might be argued that it would be desirable not to take steps with regard to them, because they effect nobody but those immediately concerned; but your Lordships will see that that is not the case with regard to crimes of this character, and that there are, as a result of intercourse between the various people mentioned in the Bill, offspring on whom the punishment chiefly falls.' (The Lord Steward, Earl Beauchamp, 2.12.1908, Lords).

'I cannot help thinking that it is better that the community should stigmatise as a crime that which is a crime in substance, seeing that it produces not only moral depravity but also physical deterioration.' (The Lord Chancellor, Lord Loreburn, 2.12.1908, Lords).

The knowledge that inbreeding has deleterious effects is also an knowledge based on bio-political techniques and informing here a bio-political strategy. The information on which these speakers based their arguments may have come from various sources, but the knowledge itself was being built up by both academics and social/charity workers. New experts - social scientists and geneticists - are linked with this new field of knowledge about incest. The work of Huth (1875) is interesting because it gives a sense of the sorts of studies and literature on inbreeding that was being produced in the late 1800s. Reading Huth illustrates how the disciplinary techniques of examination and surveillance (eg. by researchers, by teachers of their pupils) contribute to the formation of this normalising knowledge. To give the flavour of Huth's work, here are a couple of extracts:

[Drawing on a Dr Mitchell's investigation of Burnmouth and Ross, Berwickshire] there was no case of a lame, deformed, blind, dumb or paralytic person to be heard of; and in the school, which was twice visited, and where nearly all the children were assembled, no strumous sores were found, nor were any of the children puny, pale or languid, but, on the contrary, merry and active, though their teacher thought them slower and duller than other children he had had in his care.'(1875:148).

[Drawing on Beddoe] At Boyndie, in Banffshire, and Rathen, in Aberdeenshire, the fishermen are a very closely interbred community, the former somewhat shorter and lighter than the landmen, and their heads are not quite so big.'(1875:150).

Thus even where the object was to disagree, as Huth does, with the argument that inbreeding had deleterious effects on offspring, the knowledge claims are based on bio-political techniques of discipline. These techniques consist in the measuring and observing of individuals who are known to be the children of closely related couples. It therefore entails an 'anatomo-politics' of the body. Further, when it is incorporated into these discussions of incest legislation, it simultaneously operates with bio-political strategies at the level of government (see Chapter Two for discussion of bio-politics). Incest is constructed as a problem of health for the potential offspring, for the communities in which it occurs and ultimately for the nation as a whole. Sex is the meeting point for the actions of individuals and populations at one and the same moment. By studying the 'periphery', the 'perverse' activities of some, the crime of incest is extended to all. These people were literally and metaphorically measured against the 'norm', and the information was then used to impose conducts of normal behaviour on the population as a whole in the name of their health. This is bio-politics at work.

The debates of 1908 also saw the clear articulation of incest as a problem of child protection. A telegram from the Lord Chief Justice refers to incest as an assault:

'You can state that I support the Bill. I have received and sent to the Home Secretary presentiments of grand juries pointing out the urgent necessity for an amendment of the law, in consequence of the frequency of assaults by fathers on their daughters.'(read by The Lord Bishop of St. Albans, 2.12.1908, Lords).

A successful amendment in the House of Commons took guardianship away from an offender if the victim were his child or ward. This amendment constructs incest as a problem of child protection. The proposer summarises:

'The House would see that the effect of that would be that upon conviction for an offence under the Act against a female with regard to whom the person convicted was a guardian, he could be removed from his position of guardian or any position of authority, and that the Court would appoint some other person in his place.'(Sir Samuel Evans, 26.6.1908, Commons).

Not only did this amendment construct an image of incest as older male/younger female, as discussed in Chapter Six, it constructed incest as a violation of a position of authority and the male as a source of future danger. Such an offence, it suggested, rendered the offender untrustworthy. This problematisation of incest is suggested furthermore by the reference to statistics from the National Society for the Prevention of Cruelty to Children:

'It appears, from a communication made to the Home Office by the National Society for the Prevention of Cruelty to Children, that the society has records of no less than forty-two cases brought to their notice in the last twelve months, some of which are described as being of the most appalling nature.'(The Lord Bishop of St. Albans, 2.12.1908, Lords).

Thus the N.S.P.C.C. are set up as another set of experts whose knowledge bears upon these debates. From a Foucauldian point of view, this knowledge is again a knowledge based upon the bio-political 'anatomo-politics' of the body (1981:139) and disciplinary powers associated with it.

What was wrong with incest, according to this construction, was that it constituted an assault and, furthermore, it was an assault upon children. This problematisation was not always used as an argument in favour of the Bill, however, but was also used to argue that legislation was unnecessary. Again, any specificity is denied to incest as it is collapsed into child abuse:

'I somewhat differ, with great respect, from my right hon. friend the Home Secretary, as regards the advantage of passing a measure of this kind, mainly on the ground that I am under the impression that a very large proportion of the cases - 90 per cent or more - can already be dealt with either under the Cruelty to Children Acts or under the Criminal Law Amendment Act ... I do not, however, wish to oppose the second reading.' (The Earl of Crewe, 2.12.1908, Lords).

Interestingly, both the 1903 and the 1908 debates also involved the construction of incest as a non-problem, or at least, as a wrong which would only be exacerbated by the passage of the Bill. In these problematisations of incest, it is not disputed that incest is wrong, but it is suggested that further incest or even a graver danger may be incited through the legislation.

'I believe that legislation of this character is calculated to do an infinite amount of mischief ... It strikes me that anything of this sort would be eagerly grasped by some portion of the Press, who make these things more public than they otherwise would be ... Everyone familiar with the administration of criminal law is well aware that the publicity given to an offence at one Assize Court produces a crop of similar offences at other Assizes; and these are cases that it is inadvisable to drag into the light of day.'(The Lord Chancellor, 16.7.1903, Lords).

'to ventilate a subject of this kind by means of prosecutions is likely to do a great deal more harm than good.' (Lord Davey, 16.7.1903, Lords).

In these remarks it is the law's role that is spoken of as the source of the danger to the family, thereby disrupting Foucault's implicit mapping of the juridico-discursive form of power onto the law, and his association⁴ the productive and inciting aspects of the deployment of sexuality with non-legal practices. These speakers suggest that the law's operations can 'incite incest'. In 1908, the same argument is used against the Bill:

'It was well-known that where a case of a disgusting nature came before an Assize Court, the mere publication of it resulted in a crop of that particular class of cases.' (Mr. Rawlinson, 26.6.1908, Commons).

'in the great majority of families in this country such a mischief as is aimed at by this Bill never enters the heads of anyone. Newspapers may exercise ... a very proper discretion, but you have people in the Court, the jury and the neighbours, and there is the danger of something which never entered the heads of people being put there by proceedings of this kind.' (Earl Russell, 2.12.1908, Lords).

In these arguments, therefore, incest is constructed as a danger to which people are vulnerable, and as a danger located within many households. Through the argument that criminalisation will lead to blackmail, it is argued furthermore, that the vulnerable family should be protected by *not* criminalising incest:

'Relatives lived together under circumstances which no one questioned, but a charge of this sort might be brought and there would be, as they knew, the very greatest difficulty in furnishing any disproof.' (Mr. Staveley-Hill, 26.6.1908, Commons).

'poor people were forced to live together, men and women often in the same room, and it was easy enough for anybody to make accusations which could not be disproved against parties who were totally innocent. They would make family life impossible if they passed such legislation. They would make it impossible for members of a family to live at home without running the risk of terrible accusations being brought against them.' (Mr. Lupton, 26.6.1908, Commons).

In these remarks, therefore, incest is still regarded as wrong, but it is constructed as a lesser problem than the dangers involved in its criminalisation. Interestingly, it is argued that not criminalising incest will protect the Family, in a way that contrasts with the arguments of the 1980s that only by criminalising incest will the institution of the Family be protected (see below).

What conclusions can be made regarding the problematisations of incest in the early debates? The first observation is that the debates are premised on the wrongness of incest. That incest is wrong is never questioned. In these early debates there is no reference

to 'the incest prohibition' using such a term. There is reference to a widespread disapproval of incest, which, as I have argued in Chapter Four, *is* the incest prohibition. These references contribute to the construction of incest as an unquestionable wrong. However, there are several different problematisations of incest. Through these debates incest is variously constructed as a problem of 'unnatural' behaviour, as a moral offence, as a geographically located problem associated with either primitive or urban subcultures, as a problem of adultery, as against codes of religious conduct, as a problem of inbreeding, as a problem of child protection and as a vulnerability of many families, to the extent that incest is liable to be incited by its very criminalisation. These different constructions of incest as a problem each enter the debates without their differences being discussed or even acknowledged. They are however very different ways of speaking about incest as I have indicated in my presentation of them. They can be understood as dispersed along the continuum which I described in Chapter Four. At one end there are those ways of speaking which firmly place incest within kinship systems, such as the construction of incest as a problem of adultery, and others which regard incest as a sexual danger within the family such as the constructions of incest as a problem of child protection, as well as the construction of incest as a problem open to incitement through the operations of law. There are, between these two ends of the continuum, ways of speaking about incest which contain aspects of both, such as the construction of incest as a problem of inbreeding, which has reference to blood, the symbol of alliance, whilst also constructing incest as a danger to be watched out for in close communities and in families.

The continuum of ways of speaking about incest does not map directly onto the division between juridico-discursive ways of speaking and bio-political ways of speaking. In the early debates there were both these ways of speaking about incest. The reference to the prayer book was an explicit example of referring incest to sovereign (God's) power of the form licit/illicit. Bio-political ways of speaking, those that draw upon different bio-political knowledges and which regard incest as a problem for the population, are represented in these debates. Several of the problematisations draw upon knowledges with their corresponding experts: incest as a problem of inbreeding, of child protection, of overcrowding. I have argued that these knowledges depend upon the exercise of power and in turn are used in these debates to make arguments which inevitably involve the transmission of power.

I suggested in the introduction to this chapter that the debates involved the construction of incest as a specific crime. The different ways of speaking about incest as a problem do or do not do this in their different ways. The construction of incest as a problem

of adultery, for example, refuses incest as a specific crime. Adultery is spoken about as wrong regardless of with whom, related or unrelated. Incest as a problem of child protection also refuses incest any specificity, because the abuse of children is wrong regardless of the relationship between the abused and abuser. Hence this later argument could and was also used against having a separate piece of legislation for incest. The construction of incest as a problem of inbreeding on the other hand gives incest a specificity that does not apply to other crimes. It uses a body of knowledge to argue that incest should be criminalised even when there is no abuse involved. The reference to the prayer book, similarly, accords incest a place as an offence specifically named by Christian tradition as forbidden. Ultimately, the specificity of incest does not have to be theoretically justified in order for the law to create it as a specific crime. However, it is interesting to begin asking this question of the ways in which incest is spoken about, because the later debates do attempt to address the question directly. I am not arguing that the way these constructions of incest did or did not accord incest a specificity was a conscious factor in the debates, a point of discussion as to whether to pass the Bill. Rather I am suggesting that on the discursive level the various constructions were pulling and squeezing incest.

The final question by which to summarise the early debates is how far a feminist knowledge of incest enters into the debate? In 1903 the debates are not the site of the articulation of concern for the welfare of women within families. No feminist knowledge on incest is articulated here. Although incest is wrong for feminists and for these speakers alike, the problematisations of incest differ greatly. Some of these problematisations are not only different from feminist arguments, but are contradictory with them. 'Explaining' incest as a form of primitive behaviour associates an incest prohibition with the advance of culture. Feminists, in contrast, associate the behaviour of incest as linked to the structure and content of culture, and explicitly argue that it is not a primitive behaviour arising from men's sexual instincts or nature (see Chapter Three). To place incest within the context of the marriage laws, moreover, is to skew the debate toward a construction of incest as a consensual act because the possibility of those people committing incest being married assumes the incest was out of mutual desire, rather than an act of abuse. In 1908, the problematisation of incest as a problem of child protection is clearly the most compatible with a feminist understanding of incest. The inbreeding argument, on the other hand, is both irrelevant and inadequate. It is irrelevant because incest is not wrong because of the effects upon any potential child conceived, but because of the initial wrong that has been perpetrated on the woman or girl-child (or, less often, boy-child). Furthermore, it is inadequate because it is not always the case that incestuous intercourse risks conception. Where the female is pre-menstrual, for example, there is no such risk.

Whatever the role of feminists in the framing and instigation of this Bill, therefore, it appears that once it reached the debates in the Houses, a feminist knowledge was nowhere clearly articulated.

The Later Debates: the Work of the Law Commission and the debates of 1985/6

How was incest constructed as a problem in the later debates? Were the same knowledges articulated as in the earlier debates? By what arguments was the specificity of the crime of incest created and the law based? In this section I explore the later debates that led to the 1986 Incest and Related Offences (Scotland) Act. Again, I am including the work of the Scottish Law Commission (the 1980 Memorandum and the 1981 Report) along with the debates in the Houses and Standing Committee.

The first observation one can make is that in simple terms of volume, the amount of texts to read, discourse on incest has proliferated. As well as longer discussions in the Houses and in the Standing Committee there are also many more studies upon whom the Commission draws. Thus Foucault's depiction of proliferating discourses around sex is confirmed at this simple level. The details of the Act are debated in some depth. One speaker remarks:

'I find it [incest] so horrendous and horrible that I want all aspects of it properly and fully debated.' (Mr Bill Walker, 4.7.1986, Commons).

Incest as a Problem of Inbreeding

The first construction of incest I will discuss is incest as a problem of inbreeding. In the Scottish Law Commission's Memorandum, this problematisation receives a chapter's discussions. The Commission states

'intercourse between certain persons should be prohibited because the offspring of such persons are more liable to exhibit physical and mental abnormalities.' (1980:22).

The Report also states that the law is necessary to 'reduce of the risk of the birth of children with defects of a genetic origin' (1981).

The chapter of the Memorandum addressed to the deleterious effects of inbreeding draws on studies of children born to related couples. These studies are the knowledge upon which this problematisation of incest is built, and medical researchers are set up as the 'experts' on incest. The Commission finds the case for prohibiting incest on genetic grounds

convincing. They quote from a study of first cousin marriages that concluded that there was a higher infant mortality rate in first cousin marriages, and that offspring may be significantly worse in 'school performance, neuromuscular tasks, physical dimensions and the onset of speech development.' (1980:24, quoting Hewitt, 1976).

Further, an American study is cited which compared the off-spring of brother/sister and father/daughter parents with those of a control group, and concluded that there was a greater incidence of early death and major defects in incestuous unions (Adams and Neal, 1967). A third study quoted is one carried out by Seemanova (1971) who compared a group of 161 children born to women as a result of sexual intercourse with their father or brothers (and in one case a son) with 95 children born to the same mothers but with unrelated fathers. Seemanova concludes that the data showed

'an unmistakable effect of inbreeding on infant mortality, congenital malformations and intelligence level.'(1980:25-6)

These studies of the children of related couples are bio-political knowledges in the same ways as those discussed in relation to the earlier debates. The knowledge gained is the result of disciplinary modes of examination of these 'peripheral' people, who are constructed as outside the norm and are measured, assessed and surveilled for the symptoms of this abnormality.

In both the Memorandum and the Report, the Commission pre-empts and refutes some objections to the inbreeding argument against incest. They reject arguments that the availability of contraceptive methods and abortion reduces the significance of this rationale for retaining the crime of incest, on the grounds that they doubt whether contraception is used in the typical incest situation, that abortion is not freely available throughout Scotland, and they 'did not favour basing criminal liability on the accident of conception or the failure to have an abortion'(1981:11). They also contrast this criminalisation with a prohibition on sexual relations between people who carry other kinds of genetic risk. The criminalisation of incest is different because first, it is acceptable to public opinion, secondly, the prohibition could be taken into account before the relationship was begun, and thirdly, that the criminalisation of incest is only a slight infringement of liberty.² Although the genetic effects on the population as a whole would be small, the Commission uses the argument on a more individualistic level, and suggests that this argument 'ignores the potentially tragic effects of avoidable genetic defects on the individuals concerned.'(1981:12).

² Since one can always choose another partner, whereas for someone carrying a risk, it would mean that no sexual relations were permitted.

The adherence of the Commission to this problematisation becomes crucial in this respect when the Commission consider whether incest need remain an offence in criminal law, or whether other provisions of the law would adequately prevent sexual abuses within the family. They note that this would discontinue the use of the term 'incest', and would decriminalise sexual intercourse between consenting related adults. With regard to the latter, they state:

'In our view, to have no such provision *would be to take less than proper account of genetic considerations* and largely to ignore the deeply rooted objection we believe many members of the community would still have to what could be seen as sanctioning sexual intercourse between blood relatives.'(1980:59, italics added).

Thus the genetic problematisation, along with the argument that the community would be offended by the decriminalisation of incest, is very important here in retaining the specificity of incest as a crime.

The genetic problematisation is also presented within the arguments for including relationships of consanguinity, for including uncle/niece and aunt/nephew (which are not criminal in English law) and for including illegitimate relationships, as well as against including relationships of affinity, against including the great grandparent/great grandchild relationship, and against including adopted relationships (although this last recommendation is later refuted in the Report).

However predominant it may be in the Scottish Law Commission Memorandum and Report, in the Houses the genetic problematisation loses place to the construction of incest as a problem of the family (a problematisation I will discuss below). Nevertheless, where the specificity of incest is tackled through challenging the construction of incest as a problem of (child) abuse, the debates are brought back to the genetic problematisation. Consider the following exchange:

Mr. Fairbairn: ... It seems that it is only when there is abuse rather than consent that one should generally expect a prosecution to arise ...

Mr. Maxton: ... In the latter part of his speech, the hon. and learned Member ... began to talk about the law having to deal with abuse in terms of incest. He began to sound as if he were saying that incest is all right provided both sides consent, and that we should prosecute only when there is abuse...

Mr. Fairbairn: ... If the law is to be sensible, it will not prosecute wrongs because they are nameless wrongs, but wrongs which do harm. The prosecution must always bear in mind the wrong that one is trying to strike at, which either is a threat to the cohesion of the family or would lead to genetic deterioration [sic]...

Mr. Maxton: ... I give the example of a man of 40 who marries early and has a daughter when he is 19. His wife dies and he is a widower; he has a daughter now of 21. If he sleeps with her for the first time and there is consent between them, does the hon. and learned gentleman say that that is legitimate because he may have had a vasectomy and therefore is not capable of procreation and there is no danger to the species?'(11.6.1986,p13-4).

When both the abuse^{and} the genetic problematisations are found to be insufficient to justify always labelling incest a crime, it becomes apparent that the criminalisation of incest derives its justification from a problematisation of incest as without an (individual) victim. That is, in order to retain the specificity of incest, it needs to be a crime that in each and every incident causes harm. This must be the case even where there is consent between two adults who cannot bear children (due to vasectomy or sterilisation). The only way incest can be understood to always cause harm is if it creates a harm to some non-corporeal victim. The argument that incest offends against public opinion, drawn upon in the work of the Commission and in the Houses, fulfills this role. This role could also arguably be fulfilled by constructing incest as a problem for the Family in general as distinct from the particular family, for whom (theoretically, although probably unusually) it may be a non-problem. As I suggested in the last chapter, when the image of the victim of incest was traced, the construction of incest as a problem of the Family was a predominant construction in the later debates.

Incest as a Problem of the Family

There are two distinct ways in which the construction of incest as a problem of the family is articulated. In the first, incest is constructed as a problem for the particular family in question, disrupting and destroying its foundations. This is a rather self evident point, as illustrated by the following speaker:

'It is clear to me that the cohesion of the family unit in general is not encouraged by the kind of relationship we are talking about.' (Mr. MacKay, 11.6.1986, Standing Committee, p21).

In the second, incest is seen as a threat to the institution of the Family, as an institution, a cultural form, and this is sometimes accompanied by the notion that incest is a threat to the core and therefore future of society.

The construction of incest as a problem of problem families is recurrent in the debates of the 1980s, although it is not as directly presented as other problematisations. The Memorandum quote a study which concludes that

'incest usually occurs in an unbroken home following estrangement between husband and wife and is protracted rather than episodic, being made possible and later perpetuated by the collusion of several members of the family and marked by disturbed interpersonal relationships in both sexual partners.'(1980:32).

The Commission goes on to quote at length from a study by Maisch (1973), who studied incest as a symptom of the 'family disorganisation' which, in his view, usually precedes it. The description the Commission reproduce from Maisch illustrates the way in which incest is problematised as a problem of a problem family, with all members playing some part. According to Maisch, the disorganisation of the family was caused by:

'the negative influence of the husband on the shaping of the marriage and the family in the first place, a similar negative influence on the part of the wife; violence and irascibility often associated with drinking on the part of the father; and promiscuity, an unsettled way of life, drinking and drug-taking on the part of the wife together with her physical illness often leading to absence from the home. The daughters of these parents evinced symptoms of disturbed personality development either in the form of psychosomatic symptoms, dissociality (as for eg. truancy, running away from home, frequent lying, undesirable sexual relations) or neuroses and other behavioural disturbances (for eg. anxiety symptoms such as fear of death, claustrophobia and suicidal tendencies) or depression.'(1980:32-3).

In this problematisation of incest, the Commission rely upon a knowledge of incest presented through a selection of psychological studies. It is a knowledge of incest anathema to a feminist analyses (See Chapter 3). In particular, it is rejected by feminist authors for the role it accords the mother of the family. This is exactly the image constructed by this chapter of the Memorandum when she is presented as failing in 'her basic social role' (1980:36). When the Memorandum discusses punishment and treatment, moreover, they argue 'there is a need in the criminal process for a treatment plan, embracing the whole of the family.'(1980:75).

This problematisation of incest regards incest as a danger within certain 'disorganised', 'problem' families. Through describing their disorganisation, they are implicitly contrasted with the 'normal family'. The knowledge upon which this construction is based is in the main psychological studies which regard the families in which incest occurs as 'deviant' and the incest as 'perverse'. This construction is a way of speaking about incest which depicts it as perverse sexuality, the deployment of sexuality end of the continuum. Moreover, these studies can have very strong normalising tendencies. The families are compared with the 'normal' family, found lacking, and set up as psychologically disorganised and, often, dysfunctional. There is in this an implied image of the functional and normal family.

Despite the fact that it does not receive the direct attention of a chapter in the Memorandum, the construction of incest as a threat to the Family, as an institution, is perhaps the most predominant problematisation of incest in the Memorandum. In the first chapter of the Memorandum the authors, drawing on the work of Murdock (1949) and White (1948) state in a way reminiscent of Parsons:

‘there is a core of theory associating the prohibition with the need to preserve the family ... it is the fundamental unit of all larger social groups and the principle means of preparing the child to participate as a mature adult in the life of his community. The problem of preserving the family is seen ... as one of controlling the potentially disruptive cross-sex attractions and rivalries engendered within it.’(1980:3).

The Commission argue that the Protestant reformers responsible for earlier legislation (that of 1567) ‘were concerned also to preserve and purify the institution of marriage as such and to restore respect for it.’(1980:4). However, it is not just the institution of marriage but the institution of the Family which the Commission consider protected by legislation against incest. In deciding the terms of the legislation, the Memorandum constructs incest as a problem that threatens the Family.

‘Punishment ... must be justified in terms of society’s present ends. We would place high among those ends *the strengthening of the fabric of the family* and the protection of its members, especially children from injury and molestation’(1980:57, italics added).

The Commission list ‘the maintenance of solidarity within the family’ as one of their four reasons for retaining the crime of incest³(1980:57). The Report continues the emphasis of the Memorandum, with the ‘maintenance of family solidarity’ again presented as a reason for retaining the crime of incest.

The construction of incest as wrong because it threatens the Family is invoked again when the Report argues that relationships of affinity can and should be removed because, inter alia, ‘there is less risk of harm to the solidarity of the family since in-laws rarely form part of the typical family household in contemporary Scottish society’(1981:19). In the Standing Committee, the exclusion of relationships of affinity is presented as a response to the changing family structure in Scotland, with the implication that they no longer form a part of ‘the Family’ which the Bill seeks to preserve:

³ The others being ‘the reduction of risk of the birth of children with defects of a genetic origin’, ‘the prevention of psychological harm to children’ and ‘the opposition of significant numbers of the community to the idea of sexual intercourse between blood relatives.’(1980:57).

'the genetic argument is not there because the parties are not related by blood, ... there are other provisions to protect children, and ... *increasingly in Scotland there is not the same family structure as in times past.*' (Mr. James Wallace, 11.6.1986, p4, italics added).

In these arguments, 'the family' is also, of course, under construction. Who is and who isn't part of the Family has to be decided if the incest law is to properly protect it. The inclusion of adopted child/adoptive parent relationship can be interpreted as relying on a problematisation of incest as a threat to the Family, because it disregards genetic links within it and places more emphasis on social links. Adopted children are therefore part of the family and to be protected. This is later explicit in the discussions of the Standing Committee

'Admittedly there is no blood tie, but because of the other factors which society deemed important, and *the reason why the law of incest should exist - principally the question of trust and the family bond* - it was thought that the adopted relationship was such that it should come within the crime of incest.' (Mr. James Wallace, 11.6.1986, p4, italics added).

The Law Commission had initially recommended against this inclusion (in the Memorandum), but were persuaded otherwise by the commentators on that Memorandum, and the recommendation for inclusion is made in the Report.

The issue of including step-children within the crime of incest remains a contentious issue in the 1980s as it had been at the beginning of the century. The arguments that surround the issue, however, have changed. Where there had been the reference to the prayer book and the elusive comment that these were the 'most serious' cases, now the problem is more often connected with defining and defending the family. Incest is regarded as a sexual/social danger to the Family. Protecting family relationships is an oft-repeated argument throughout the debates in the Houses and the Standing Committee. Most arguments suggest that the step-child is part of 'the family'.

'Where I consider the Bill and the Law Commission report to be wrong ... is in their approach to step-children. I consider that they should be treated in exactly the same way as adopted or illegitimate children, and should have the same protection. ... They are accepted into the family and the parent and the step-parent normally regard them as children of the new family. ... The proposal that where, for example, the daughter of the mother reaches 16 intercourse between the step-father and daughter is not to be criminal seems to me to strike a severe blow at the family relationship.' (Lord Morton of Shuna, 9.12.1985, Lords).

The above speaker suggests that if the House decides that the step-parent/step-child relationship is not to be wholly forbidden, the age to which it is an offence should be raised above 16, or that there should be prohibited altogether a relationship where

the step-child was at any time a child of the family as defined in the Marriage Bill that was currently going through Parliament. In the next debate he proposes an amendment which criminalises *as incest* sexual intercourse between a step-child or former step-child and step-parent or former step-parent. Again, incest is problematised as a threat to the family. This moves the problematisation of incest away from any issues of blood, in the same way that the inclusion in the Bill of adoptive relationships between parent and child as incestuous had already taken 'incest' away from the genetic problematisation. Lord Morton's first argument is that step-children are a part of the family (that incest legislation is assumed to protect):

'The Law Commission, in recommending that incest should apply to the relations between the adopted child and the adopting parents, argue that the bond may be indistinguishable from that of the natural child and its parents. I find it very difficult to see that this argument does not apply with even more force when one of the two parents ... is in fact the natural parent.' (Lord Morton of Shuna, 28.1.1986, Lords).

The problematisation of incest that the argument constructs is that of a threat to the marriage relationship, the Family, and Society as a whole. It oscillates between a problematisation of incest as a threat to the particular family, as this speaker had suggested earlier when he said incest cases 'are also cases that illustrate a family which has been very unhappy for a long time'(Lord Morton, 28.1.1986, Lords), and a wider problematisation of incest as a threat to the Family in general. It is also noteworthy that this problematisation seems to equate incest with adultery, a danger to the marriage relationship:

'The effect of voluntarily entering into the relationship of marriage should, I would argue, involve excluding the possibility of a sexual relationship with one's partner's child. Otherwise there is always going to be the potential of temptation and of danger to the stability of the marriage relationship.

In an age when divorce is becoming more and more frequent, the state should do what it can to encourage marriage being a permanent relationship. It is part of the function of the criminal law to promote and maintain generally accepted standards of behaviour reflecting the public interest in preserving an ordered and stable society.' (Lord Morton of Shuna, 28.1.1986, Lords).

In a similar way, in the Standing Committee incest is constructed as a problem of adultery:

'Is it not right to act on the first principle that if the man chooses to marry the woman, he should not sleep with the daughter or any one else?' (Mr. Forsyth, 11.6.1986, p12).

'for people like me who believe that people should not have sexual relations outside marriage it is difficult to countenance the idea of relaxing the law as it stands.' (Mr. Forsyth, 11.6.1986, p15).

In relation to the question of how to include step-children, the debate brings up the question of the difference between adopted and step-children, as the quotation from Lord Morton (above) illustrated. Here incest is problematised as an abandonment of the parenting role, and the law's problem is the adequate protection of children. The Lord Advocate argues that adoption is 'a choice made by those who adopt ... whereas the step-relationship comes into being by virtue of marriage between the natural parent and another.' (28.1.1986, Lords). One was thus about having a child, and being a parent, whereas the other was not. Another speaker also distinguishes between adopted and step-children, through the suggestion that

'To the extent that [an adopted child] maintains a relationship with its own natural parents, it is not, and never can be in the full sense, a child in the family in which it is a stepchild.' (Baroness Seear, 28.1.1986, Lords).

In these differentiations between adopted and step-children, incest becomes regarded as the breaking of a parenting decision. Incest is a problem, it is suggested, because the role of parent (or other familial role) is abandoned through these sexual activities. Again, incest is a threat to the family by a confusion of its normal and desirable roles.

The relationship of the incest to the marriage laws is also used in an argument against the amendment in the Lords. Here, the concern is with the consistency between the marriage and incest laws.

'Lord Meston has a Bill going through the House at the present time. ... If this law goes through, the Scottish law ... will be strangely at variance with the position in England. It will be such that a man can be legally married to a woman in England who, if she goes to Scotland, will be committing the offence of incest.' (Baroness Seear, 28.1.1986, Lords).

'if the marriage Bill of the noble Lord, Lord Meston, should become law in its present form ... there will continue to be a problem under the existing law and indeed under the present Bill, if it is amended in the sense that is proposed: that persons who will be free to marry ... under the law of England and Wales would, if they had intercourse in Scotland, be committing incest - not of course married persons, because provision is made for that; but if they were free to marry.' (Lord Advocate, 28.1.1986, Lords).

The suggestion to include step-children/step-parent as incest was withdrawn. However, a group of amendments is proposed to raise the age to which sexual intercourse with a step-child would be included in the Bill as a 'related offence', and to insert the

condition that sexual intercourse between a step-parent and step-child only be allowed where the child has never lived in the same household and been treated by the step-parent as a child of his or her family. These amendments, again, problematise incest (via its related offence) as a threat to the institution of the Family. If the step-child had ever been treated as a child of the family, sexual intercourse was unacceptable, whatever the age of the child. The inclusion of step children therefore is only made where the step-child is or has been a part of the (nuclear) family.

This is confirmed in the Standing Committee where the inclusion of step-children is framed in terms of protecting the family and the institution of marriage. The following speaker explicitly draws attention to the Conservative party's discourse of 'the family' as the cornerstone of a stable society, arguing that to leave the step-child's age restriction at sixteen would be to suggest that it was acceptable for a step-child and a step-parent to have sexual intercourse but not, according to the present Marriage laws, to marry.

'I am no lawyer, but merely a politician who believes that there is a duty on this place to do everything it can to strengthened the institution of the family. ... I am worried about passing legislation which seems to suggest that it is perfectly alright to sleep with one's step-daughter provided that she is over the age of 16 and gives her consent, but that one cannot marry her until she is 21.'(Mr. Forsyth, 11.6.1986, p15).

'as the Conservative party very much believes in the family and the institution of marriage it is ironic that we should be asked to endorse this principle.'(Mr. Forsyth, 11.6.1986, p15).

'If ... one takes the view that marriage is not just a legal matter but is ordained for the procreation of children ... how can it be right for our law to allow an act which could result in the procreation of children but not allow that act to take place within the institution of marriage.'(Mr. Forsyth, 11.6.1986, p15).

The discourse of the family as the cornerstone of stable society is also used in an argument that suggests the possibility of offspring will threaten the Family. Thus the Commons debates witness the problematisation of incest as a problem of illegitimacy. The arguments are still made with the aim of raising the age of inclusion of a step-child, but this time the argument focuses on the potential off-spring. The offspring as victim was not confined to the inbreeding argument against incest. Here the problem would be the child's behaviour and (un)happiness.

'More important - and it is to this issue that we must turn our attention - are the children who are likely to result from such a relationship. Does anyone really believe that children conceived in this way would not at least have a real prospect of becoming what is known as problem children - another concern for our modern society? The important aspect is what it

does to the children, but another aspect is the attendant cost for the public purse and taxpayer if the situation were to get worse.

Does anyone believe that bastards conceived between a stepfather and a stepdaughter aged 16, 17 or 18 can hope to be anything other than, at best, a curiosity to other children and members of the community where they live? We all know that children can be very cruel, and often that makes life very difficult for sensitive youngsters ... At school they will be abused and given, I have no doubt, hideous and horrendous names.'(Mr. Walker, 4.7.1986, Commons).

Later in the debate, Mr. Walker restates the problem as one of illegitimacy, which, in turn, he links with Christian morality:

'I am concerned about the children who can be produced from such a liaison. Although the minister can no longer stand up in the kirk and point out the sinners, we should not think that the congregation do not look around and comment. We can all imagine them asking: 'Have you heard? The children will be born out of wedlock, but we are saying that that is preferable to their being born in wedlock. That must be unacceptable for anybody who supports the Christian teachings and values of the Scottish Church.' (Mr. Walker, 4.7.1986, Commons).

In the Commons debates a further variation on the argument to raise the age to which step children are included is that if a step child over 16 and under 21 and step parent were allowed to have sexual intercourse, this may lead to a birth, and since they were not allowed to marry, to a 'one parent family'. The speaker suggests that this is a growing concern of society. Thus incest is linked to the 'social problem' of one-parent families. The speaker argues that the age to which the step-daughter is included should be raised to twenty one

'One parent families are a growing public concern. No one doubts that this matter is causing concern for those involved in social work and activity, those concerned with the churches and any one who cares deeply about our society. If the Bill is unamended, it will make a positive contribution towards the creation of more one parent families.' (Mr. Walker, 4.7.1986, Commons).

The construction of incest as a problem 'about' the Family, either the particular family or the Family as a traditional social institution, therefore, is the one which is most predominant in discussions. Incest is constructed as a threat either to the particular family or to the institution of the Family. The Memorandum uses arguments that suggest incest is a problem of problem families, but the majority of the discussions speak of incest as a threat families that would otherwise be stable units. This argument is often extended and generalised so that the threat, 'incest', is set up as opposition to the valued cornerstone of stable society, 'the institution of the Family'. The Law Commission

suggested that the 'maintenance of the solidarity of the family and the strengthening of its fabric'(1981) was one of the main reasons for retaining the crime of incest, and some of the speakers too, suggest that this is one of the main reasons incest legislation exists:

'there is no genetic degeneration [in contemporary Scotland], but there is an increased need to safeguard degrees of trust and relationship, to protect children and the family in an age when doing what you like with whom you like is constantly on television.' (Mr. Fairbairn, 11.6.1986, p12).

Because the blood relatives included in the Bill are accepted as unproblematic, the majority of the discussions take place around the inclusion of step children in the Bill. In terms of the construction of incest as a problem of the Family, the question becomes under what conditions are step children a part of the family? The arguments that are made around this question illustrate that the object 'the Family' is also under construction. Although the speakers are grouped here because they are all constructing incest as a problem for the Family, the images constructed can be very different. This problematisation encompasses many of the different images discussed in Chapter Six.

This construction of incest as a threat to the family is differently placed on the continuum of ways of speaking about incest depending upon how it is used. Where the Family and marriage as social and traditional institutions are set up as threatened by the illicit behaviour of incest, incest is constructed in relation to the system of alliance. Where incest is depicted as a problem of the particular family's functioning, it is closer to the deployment of sexuality insofar as it depicts incest as a sexual perversity and/or the family as abnormal.

Incest as a Problem of Causing Harm to an Individual

Where incest is not problematised as wrong due to the deleterious effects of inbreeding or the threat it poses to the Family, it is often constructed as a problem due to the harm it causes a living individual. That is, incest is seen to constitute a harm not to a potential individual (the offspring) nor to a collection of individuals (the family) nor to a social institution (marriage or the Family), but to one person involved. There are several related ways in which this construction of incest is articulated in the debates: reference is made to psychological harms, to incest as a problem of child abuse and to incest as a problem of violence. These ways of speaking about incest are not mutually exclusive. They can and do overlap.

The chapter of the Memorandum (1980) entitled 'the psychological effects of incest' concludes the incest can result in psychological harm for the girl involved. In

contrast to the medical research of the chapter on the genetic effects of incest, the studies used in this chapter tend to be psychological studies that approach the family as a system. Despite its title, however, the chapter tends to problematise incest not so much as a problem of psychological harm as a problem of the particular family's functioning. In terms of immediate psychological effects, the Memorandum argues,

'In general it would appear that the relationship is sustained by means that can only increase the highly emotional and stressful situation of the child who is already the victim of disordered family relationships.'(1980:36, drawing upon Hughes, G. 1964).

In the Report the protection of family members from psychological harm is stated as a reason for retaining the crime of incest. They state that incest causes psychological harm 'not only to actual participants but also other members of the family', and that this is 'especially grave where one of the parties is a child or otherwise in a position of dependence or subject to the authority of the other'(1981:8). This problematisation echos a feminist understanding of incest. However, it also constructs incest as problem of family functioning, which contradicts the feminist insistence on looking not at the family in which incest is perpetrated as a unit, but, instead, at the gendered power dynamics of incest.

The psychological effects of incest to which the Memorandum refers are mostly the long-term effects, what the Commission term 'delayed psychological harm'. Drawing again on the work of Benward and Densen-Gerber (1975), the Memorandum argues that incest can lead to the 'premature development of sexuality without adequate means of coping with the sexual tension.'(1980:37). Subsequently, they continue, the victim of incest is particularly prone at adolescence to seeking outlets for her

'inner turmoil by way of anti-social behaviour and relief through use of drugs. Once the incest barrier is broken, it is easier to advance to other forms of deviant behaviour, particularly promiscuous sexual behaviour, and the adult female exhibits a marked inability to protect herself from self destructive behaviour and relationships.'(1980:37, quoting Benward and Densen-Gerber, 1975).

With reference to another study the Law Commission depicts the incest as leading to the 'development' of psychological problems:

'of the 26 daughters in this study [of father/daughter incest], eleven developed character disorders; they became promiscuous and four of them later became prostitutes. In addition they also had psychopathic traits, such as drug abuse or delinquency; five girls, after they married, developed frigidity and aversion to sexual relations with their husbands and four girls showed some frank psychiatric symptoms ... ; three others developed

depressive reactions with repeated suicide attempts. Only six girls (23%) showed no apparent ill effects from their incestuous relationship.'(1980:37-8, drawing on Lukianowicz 1972).

This is tied with a threat to the subsequent generation, as the Commission quote a study which concluded:

'the result could well be a second generation of inadequate persons who will produce subsequent generations of neglected children unless we develop tools for prevention, detection and treatment of these families and their children.'(1980:36, drawing on Benward and Densen-Gerber, 1975).

Thus the psychological effects on the girl are used to assume a similar role as had the arguments around the genetic effects of inbreeding. The danger of incest is extended into the future, located as a danger for subsequent generations. Instead of genetic problems, however, the problems will be of a social and psychological inability to parent and adequately 'socialise'. Incest is constructed as wrong because it causes long-term psychological problems for the incest survivor. The way in which it is spoken about however, tends to regard the survivor's behaviour as the problem. She is constructed as a 'problem child'. She will be anti-social and a bad mother.

In their use of these studies therefore the authors construct the behaviour of the survivor rather than the incestuous abuse of Fathers as what incest is 'about'. The behaviour is regarded as somehow 'igniting' the child's sexuality, as if sexual abuse were simply too premature an encounter of adult consensual sexual relationships. Again, the bio-political nature of these knowledges is apparent in their observation, examination and normalisation strategies. The survivors are labeled as 'deviant', 'psychopathic', 'frigid' or 'self destructive'. Incest is constructed as a sexual danger and a social problem. The implicit normal against which the survivors are measured includes not only emotional states but sexual behaviour and potential mothering abilities.

Furthermore, the studies maintain the notion of the incest prohibition, suggesting that it is the breaking of 'the taboo' which has led to an array of behavioural difficulties. They construct the traversing of the prohibition as the wrong of incest. This continues even where the family is acknowledged as a site of potential (male) violence. The Memorandum quotes a case study, taken from Allen (1969), and presented as 'typical'.

'At the outset, because he has lost control due to alcohol, [he?] assaults his daughter. Her silence is enforced through threats and, the prohibition broken, the behaviour tends to continue with the girl becoming more and more acquiescent until a relationship almost comparable to that of a marriage is established.'(1980:35).

'The methods by which the incest relationship, once begun, are various; for eg. by exhorting the girl to say nothing, by verbal threats and intimidation or by giving false information to the girl such as that it is she who will go to prison. Some parents offer material gifts or other favours ...'(1980:35).

These quotations seem compatible with a feminist understanding of the wrong of incest. Yet both of these quotations are paired with distinctly non-feminist understandings of incest. The first compares incest to a 'normal marriage', and continues

'However, once the relationship becomes known to others in the family, the relationship is upset and the 'natural horror' expressed by those others produces a strong sense of guilt in the girl as a result of which she plays the part of the victim of the relationship 'which she had not only endured but enjoyed'.'(1980:35, quoting Allen).

The second has a footnote added that warns

'It should be remembered however, that in some cases the girls do actually encourage the breaking of the taboo'(1980:35).

The argument that consent is a difficult concept within the family is repeated at various points in the debates. This argument is compatible with a feminist knowledge to the extent that it represents the family as a site in which people are vulnerable. As such they are at the 'incitement' end of the continuum. The Commission explicitly place incest within the spectrum or continuum of male violence against women:

'The quality of the offence is often undistinguishable from that of rape. While consent may not be completely absent, it is difficult to differentiate between threats, duress, acquiescence and willingness in a situation where the man is in authority over the child.'(1980:69).

'it is an open question whether, in a family, one can usefully talk in terms of a daughter's or son's consent'(1981:9).

In the Commons it is argued:

'I understand that it is extremely difficult to prove whether or not consent was given, demanded or accepted ... We have to reach a decision ... All this happens within the family home, *where there is a real danger of abuse.*' (Mr. Walker, 4.7.1986, Commons, italics added).

'A person of 16 is still a child. We must recognise that the circumstances of the domestic home impinge on the ability of the child who is the victim to say anything because that child may end up on the street.' (Mr. Walker, 4.7.1986, Commons).

A speaker in the Lords argues that consent to intercourse can be 'obtained by various methods and devices', and that it would be 'unreal to suggest that a girl or boy of

16 who has been brought up in this situation should suddenly have a free and totally adult approach' to her step-father (Lord Morton of Shuna, 28.1.1981, Lords).

These arguments illustrate how the concept of childhood is also under construction, as they limit or expand childhood according to their wish to criminalise the age to which sexual relations between step-child and step-parent would be criminal.

The Report's proposal of section 2C which made it a criminal offence for those in positions of trust and authority to have sexual intercourse with a child under the age of 16 within the same household also seems to reflect feminist concerns. Blood relationship being irrelevant here, the concern seems to be more with child sexual abuse. The Report suggests there is a need for a related offence concerning step-children because other provisions of the law

'do not distinguish between offences committed by a stranger and those committed by a step-parent where there is the additional element of a breach of trust and authority.' (1981:20).

Furthermore, they consider that some other relationships, such as foster child/foster parent should not be included as incest but that

'a special offence should be created for this purpose in preference to extending the law of incest.' (1981:23).

Thus the Report suggests that the problem with this sort of offence is at once similar to incest whilst not being incest. Family violence and child sexual abuse are 'related' to incest and are a context for incest, but they do not exhaust what incest is 'about'. The specificity of incest, and the need for a separate offence 'incest' is here negatively constructed as beyond the problem of family violence and child sexual abuse.

The most explicit construction of incest as a problem of sexual violence against women comes in the Commons debates. The only woman to speak in the Commons states

'I have been forced to be interested because of the increasing and in many ways, welcome discussion about incest, which until fairly recently has been swept under the carpet. We should all welcome the fact that now both men and women are beginning to discuss these problems, which are particularly difficult for the girl or young women involved in what amounts to violence against her by a member of her family...

Many women of all ages have told me of the pressures on them from their fathers, stepfathers or in some cases, their elder brothers to develop a relationship. It can start at an early age when the young girl does not know when it is happening, is frightened, and knows something is wrong but does not know what...

Incest can begin with such violence - that is what worries me - and at such an early age. If such a relationship has gone on for a long time I wonder whether at 16 a young woman - however much she might feel she is consenting... - has had a chance to discover her own feelings.' (Ms. Richardson, 4.7.1986, Commons).

In response to an amendment concerning how to include step children, one speaker in the Lords argues that although protecting young women from older men is the 'obvious' image of incest, there may be inappropriate cases caught by the amendment. He draws upon the discourse of romantic love to suggest that some cases that may be caught by the amendment are not in his opinion what the crime of incest is about:

'It is easy to get excited about protecting innocent young girls ... against the malpractices of the male of the species. But consider the other side of the coin. Consider a woman in her thirties who marries but soon separates from a man in his early twenties.

The man and the woman's 17 year old daughter fall in love. They have sexual intercourse, not thinking there is anything wrong with it. There is no blood relationship. They are both of marriageable age. ... It is hard to see why the man should be guilty of a criminal offence.' (Lord Wilson of Langside, 28.1.1986, Lords).

The Lords debated a further amendment which suggested that the deletion of the whole of Section 2C, the abuse of trust and authority. It is argued that this could be dealt with under general sexual offence law⁴. However, this amendment was withdrawn after it was argued that the other law did not provide adequate protection. Here again, therefore, the issue is one of child protection.

'It would reduce the protection available to young girls since the Bill as presently drafted provides a maximum penalty of life imprisonment for relevant offences. It would remove the protection of young males altogether, leaving this to be dealt with via the general charge of lewd and libidinous practices which I suggest the Committee may think was scarcely adequate.' (Lord Cameron of Lochbroom, 28.1.1986, Lords).

Throughout the debates of the 1980s therefore, from the work of the Scottish Law Commission to the debates in the Houses and Standing Committee, it is apparent that there are several different ways in which incest is constructed as a problem. Several of these understandings are based on knowledges in the sense that there is a body of writing, studies and experts which accompany them and give them status as true. (The knowledges are not necessarily drawn upon evenly in the debates. For example, the Memorandum gave

⁴ See Appendix II to see how the proposed Bill related to other sexual offences under which incest could be punished.

importance to the inbreeding arguments, which hardly figure elsewhere in the debates.) The battle in the debates is not over which is the more true so much as which understanding of incest is what incest is really about. Many of these knowledges are not sufficient in themselves to justify retaining the crime of incest. That is, several of them cannot form the basis of an argument that incest is always wrong, even where there is consent and there is no risk of conception. The resultant incest legislation is therefore a product of these several knowledges and statements. Together they provide an array of reasons which can be drawn upon in arguing for the retention of the crime of incest in Scotland.

Several of the knowledges (as opposed to statements or assertions) that are articulated in the debates are bio-political in nature. They are the result of the operations of disciplinary techniques of observation/surveillance, examination and normalisation. They objectify those at the 'periphery', be they closely inbred communities, survivors of incestuous abuse or children of incestuous relationships or incestuous abuse. These are the objects of study, yielding knowledge gained through the exercise of power.

Some ways in which incest is constructed as a problem accord incest more specificity than others. Often the specificity of incest (and therefore the justification for retaining it as a separate crime) is lost as incest is conflated with other 'wrongs' such as adultery or child abuse. The inbreeding arguments and the construction of incest as a threat to the Family accord incest a specificity that other ways of speaking about incest do not. Indeed, the debates in the Houses and Committee drew less upon the inbreeding and more upon the Family arguments, making the latter (along with the psychological arguments) function as had the former. They have the scope not only to give specificity to the crime of incest, but also to extend the problem into the future.

One of the reasons that the inbreeding argument is not drawn upon in the debates of the Houses is that the debates are 'hung', in the main, on the issue of step children. When the Bill is introduced, the continuing criminalisation of blood relationships is presented as straightforwardly acceptable.

'In a nutshell, the Bill simply does four things. First of all, it leaves all these consanguineous relationships which are at present within the ambit of the law of incest where they are and where they have been for many years. ... The second thing is that the adoptive relationship is brought within the ambit of incest to the extent only of the relationship between parent and child. ... This may be a controversial issue and there may be different views about it. ... The third thing is that it takes out of the ambit of the criminal law of incest all these relationships by affinity which are presently within it. ... The fourth thing that the Bill

does is to create the related offences of the title of the Bill. The necessity for this arises ... because some of the relationships by affinity which are taken out of the ambit of the incestuous will include children and young persons; for example, step-children. ... I say frankly that I am a little unhappy about some of the detail of the provisions in these related offences.' (Lord Wilson of Langside, 9.12.1985, Lords).

That incest should remain a crime for the consanguineous relationships is barely questioned. That it should be questioned is treated with incredulity by Lord Wilson:

'I wonder whether I should say anything at all in support of the Bill's retention of incest as a crime. Apparently that was one of the questions the commission considered, they indeed devoted some eight pages of their report to a careful consideration of the question.' (Lord Wilson of Langside, 9.12.1985, Lords).

He argues that the commission's conclusion that incest should remain a crime was the correct one, and suggests that the justification for this stems from 'our repugnance at the idea of sexual relations between close blood relations', which is 'strongly and widely felt'(9.12.1985).

Here the speaker illustrates the role that the incest prohibition has in these debates, as a form of safety net. Although the law is said to be responding to a societal dislike of incest, or to an 'incest prohibition', I suggest that the law is itself a part of the incest taboo, and, being a powerful discourse in our society, an important part. In line with Chapter Four I would argue that the law does not respond to the incest prohibition, it is a continuation of (the discursive) incest prohibition. The only sense in which it could be argued that it responds to an incest prohibition is the sense that the speakers consider 'what would people say' (if we decriminalised incest). But the speakers do so as if the law itself played no part in the production of that reaction.

The debates of the Lords, Commons and the Standing Committee in 1985/6 centre for the most part, therefore, on provisions of the Bill other than those concerning blood relations. For the most part it is the question of step children which is debated. Through the question 'should and if so how should step children be included in the crime of incest?' these debates illustrate the sense in which the object of discussion - 'incest' - is itself under construction. The answer to the question depends upon how one conceives incest as wrong. For example, the constructions of incest as child abuse within the family would include step-children without question, whereas the inbreeding argument could not justify including them. The construction of incest as a threat to the Family has to consider the changing structure of the family in answering the question.

Questions of age became important in the debates on the inclusion of step children in relation to the question of consent (can a child over 16 consent? Will s/he really be in a situation in which s/he could refuse consent? If not, would she be adequately protected by other laws?) and the question of marriage (does it matter if the incest laws do not reflect the marriage laws in every detail? Is it acceptable for a stepchild and parent to have sexual intercourse and possibly children but not to be able to marry?).

This question illustrates the way that the different ways of talking take place on the continuum discussed in Chapter Four. On the one hand incest is spoken about within the context of sexual dangers in the family and incest is seen as a sexual perversity, a danger and/or a social problem. Incest is seen by these ways of speaking as a danger within the family. On the other hand, incest is spoken about in relation to marriage laws and the system of alliance. Incest is here constructed as a threat to kinship systems. In this way there is some 'tension' in the way in which incest is put into discourse.

Conclusion

I turned to law with the argument that, taking the form 'thou shalt not', the criminal law is a straight forward example of the juridico-discursive incest prohibition. This chapter has illustrated, however, that although the law on incest may appear as the independent command of a sovereign, that the law is not independent of other discourses in society. In the process of law creation I have argued that the law is the site for a continuum of ways of speaking about incest. Several of the knowledges are biopolitical knowledges, based on disciplinary power and entering the government of 'the population' through their articulation in these debates. As well as these knowledges, however, there are also other assertions about incest, on incest's relationship to other laws and on morality.

Some knowledges of incest appear in both the early and the later debates. The inbreeding arguments, for example, on the level of assertion in the early debates, are again articulated in the later debates, with several studies to back them up. Incest as a problem involving children is also articulated in both sets of debates, although the later debates the construction of incest as a problem of family functioning also receives space. Incest as a threat to marriage and the family as social institutions is also a frequently articulated construction in the later debates, although in the earlier debates it is the criminalisation of incest which is held to be threatening to the family.

The statement that incest is abhorred by society in general is voiced in both sets of debates. Although these statements suggest that the law is responding to 'the incest prohibition', I have argued that the law's prohibition of incest is not a response but a continuation of that discourse. The law is part of a way of speaking about incest that creates 'the incest prohibition' as a discursive phenomena. It does not simply respond to it, therefore, as if the law were some how ^{not} implicated in social discourses, but produces and reproduces it.

In exploring the law's production of the object 'incest' I have illustrated the fragile nature of incest law in the sense that the specificity of the crime of incest relies upon an array of different knowledges and understandings of why incest is wrong, none of which is alone sufficient to justify retaining incest as a crime. Incest is pulled onto the different agendas of these ways of understanding it. Feminist discourse is one of the ways of speaking about incest, constructing incest as a problem of child sexual abuse within the household. It is not 'the Law' against which this feminist knowledge struggles to be heard, but against the other knowledges and ways of speaking about incest that exist society wide. The articulation of feminist knowledge to these debates was minimal. Although it seems clear that feminists were involved in campaigning and drawing up the proposals for the criminalisation of incest in English law and sympathetic Members introduced the Bill into Parliament, feminist knowledge is not explicitly articulated in the early debates in the sense that incest is not constructed as a problem of child sexual abuse within the family. In the later debates it is articulated but only on a couple of occasions in the Commons debates. Feminist knowledge is but one in a mosaic of ways of speaking about incest that contribute to the process of law creation.

Chapter Eight

Conclusion

This thesis has brought together several writings which, whilst they are obviously pertinent to each other, have not been previously considered within the same framework. First, I have considered how the work of Michel Foucault can be of use in furthering and to some extent rewriting feminist analyses of incestuous abuse. Whilst feminist theorists have explored Foucault's work on a general level (eg. Diamond and Quinby, 1988; Phelan, 1990), it is rarely used in an extended investigation of one issue, and this is the first time his usefulness has been explored on the specific issue of incest. In doing so I have refused to regard feminist work on sexual abuse as an area of feminist sociological investigation separate from the theoretical work of feminism or sociology. In my rewriting of the feminist work I have shown the broad explanatory power that feminist work on incestuous abuse can have as sociological analyses, without losing the feminism of that work. Secondly, using Foucault's work on ways of speaking about incest I have considered how feminist work on incest relates to the prior emphasis on the incest prohibition. The concept of the incest prohibition has not previously been considered at any length by feminist work on incestuous abuse, and by doing so, I have built an argument based upon the feminist work on incestuous abuse which enables feminism to enter debate with the previous and current work which unproblematically accords the incest taboo status as a Truth. Thirdly, I have furthered the use of Foucault's work in feminist investigation of law, bringing this literature on Foucault and feminism alongside feminist work on incest in an investigation of incest law creation. In this concluding chapter I will recall the conclusions that have been reached through the thesis in order to pull the intersecting questions back into one 'picture'.

This thesis has been an extended investigation of the usefulness of Foucault's work, and particularly THS, for a feminist project. My exploration has taken place both on a general and a more detailed level. On the general level, there are some stumbling blocks which I have attempted to work through, sometimes finding that the clash is

based on misunderstanding, sometimes that it is not as problematic as it first looked and sometimes to conclude that there is indeed a stumbling block if the goal is a completely unproblematic use of Foucault within feminism (Chapter Two). Foucault's arguments around truth's relationship to power, and power/knowledge, had to be clarified since there has been much argument over his position. This was important for this thesis in light of how I wanted to use Foucault in thinking about discourses of incest, and I concluded that interrogating power/knowledge networks that lie behind claims to Truth is a project with which feminism is and should be involved. In large part the thesis has been an exercise in investigating the truth claims that take place around incest, their production and transmission of power, as well as their fragility (Foucault, 1981:101). Foucault's lack of interest in gender has not been as great a problem as one might have feared. By tracing exactly what was at stake in the criticism that Foucault 'omits' gender, I have not defended his lack of interest, but, following De Lauretis (1987), I have argued that THS can be of use to feminism in spite of Foucault's lack of interest in gender. Foucault's rejection of power models based on a binary division has proven to be a major point of disagreement. Although there has been movement on both sides, much feminist work is based upon consideration of how men as a group maintain power over women as a group. Feminist work often involves the tracing of power's operations across the gender divide. Nevertheless, Foucault's work on power comprises a large proportion of his writings, and much of it is useful within a feminist framework even where the binary notion of power is retained.

I have by no means advocated an uncritical adoption of Foucault's thought. There have been several points where his argument has been criticised and rethought from a feminist perspective. But the emphasis has been not on listing faults. Rather, it has been on seeking potential. In line with other feminist writers (eg. Diamond and Quinby, 1988; Sawicki, 1988; Smart, 1989; Weedon, 1987) I have argued that there is much in Foucault's work which makes it of interest for feminist investigation. Chapter Three used the general arguments for the possibilities of using Foucault within feminist theorising in a reading of several feminist texts on incestuous abuse. The chapter illustrated the way in which Foucault's work can operate as a site for the rethinking/writing of feminist arguments which, without losing the sense of the arguments, take them further. Indeed, the subtleties of the feminist work have been brought out by this exercise, forcing them to be taken as serious sociological analyses.

In particular, Chapter Three argued in favour of three main rewritings. First, a shift in emphasis away from too blanket a use of the term 'violence' to a consideration of

different technologies of power (seen to operate in incestuous abuse in both a juridical and a disciplinary form). Secondly, a rewriting of feminist work on male sexuality as discursively informed and as a discourse which intersects with others, in particular discourses of 'the family'. Thirdly, a move away from a stress on silence, highlighting the critique which feminism has made of the ways in which incest has been spoken about (as perverted, as a problem of dysfunctional families), ways that produce power/knowledge and that place the knowledge on which feminist work is based - that of incest survivors - in the position of a 'subjugated knowledge'. Although the first two points are important, it is this third point which has been taken up in the remainder of the thesis to the extent that I interrogated various ways of speaking about incest.

Concentrating only upon the broad strokes of THS misses the opportunity to wander through the avenues this dense work opens up. In an exploration of his more specific arguments around incest, this thesis has attempted to use THS in its full richness (Chapter Four). To my knowledge, the few pages that refer to incest have not previously been explored. They are of great interest, however, due to the place that incest takes up in the overall argument of the book. Incest is the stage for a dynamic confrontation between the two systems of relating people as sexed bodies, and therefore between the two forms of power ('old' and 'new'). Foucault's arguments provoke a challenging self-reflexive mode for feminist work on incest, provides concepts which can be used to clarify the feminist position and contains arguments which offered a framework for the explorations of the parliamentary debates.

The feminist analyses of incest have tended to concentrate on arguments relating to the practice of incestuous abuse, without much reference to the body of academic literature on the incest prohibition. The feminist analyses of incestuous abuse have challenged the notion of an incest taboo but they have also often retained it, perhaps in some reconstructed form, as a rule which is either obeyed or disobeyed. Investigating the place of incest in THS forced the question of the place of the incest prohibition in a feminist analyses. I extended the feminist questioning of ways of speaking about incest to an interrogation of the notion of the incest taboo and its presupposition 'incestuous desires'. My argument is that the Truth of the incest prohibition is one which has been upheld by discourse, including the social sciences, but that it is 'merely' a discursive truth, existing only insofar as it exists in discourse.

Thus, against the back drop of Foucault's work, and with the assistance of Butler's (1990) investigations, I have argued that the incest prohibition can only have any

meaning if it is understood as a discursive construction. This does not mean that it cannot operate as a deterrent to incestuous behaviour. But it is not a steadfast rule nor need it have significance in every one's lives. It is a way of speaking, at times powerful, but always fragile.

The concept of incestuous desires is also a concept which has taken on the status of Truth. Through a feminist analysis I have contextualised the concept, arguing that this undifferentiated notion has little explanatory power. Chapter Four argued that when a child has incestuous desires they are not necessarily sexual, when an adult has incestuous desires they are not necessarily about the family membership of the desired person, nor need they be about sexual pleasure at all.

This thesis has therefore brought feminist arguments on incestuous abuse together with feminist arguments on the incest prohibition. In doing so it brings feminist work within a tradition of sociological work on incest and highlights the way in which sociological discourse is complicit with a way of speaking about the incest prohibition as an unquestionable Truth. Although it is clearly a question of sexual abuse, by regarding feminist work on incest as having implications only for feminist discourse on sexual violence, ^{means} the implications that it has for wider discourses on incest are left unexplored. Feminist work on incest can no longer be seen as about something other than sociological work on kinship and the sociology of the family. Exploring the feminist work entails a rethinking of the place of the incest prohibition in much of this work, as well as related assumptions, such as the functional family. Although very much a sociologism of days past, the discourse of the harmonious family and the functional family still pervade much academic thinking. The question of incestuous abuse from a feminist perspective is a direct challenge to this. The powers which, in my rewriting, feminist work has analysed are not confined to those households where Father s are abusing. They are powers which can operate around and within any family. Moreover, discourses around the family and male sexuality produce and transmit the power of the Family in that setting.

Taking Foucault's work on incest as its starting point, the thesis has been an illustration of the many different ways in which incest is spoken about. Indeed, I have suggested that there is a 'continuum' of ways of speaking that ranges from those ways of speaking which deny that incest occurs, and speak instead of the prohibition and the order of kinship systems, to those ways of speaking that see incest as a danger, a psycho-sexual perversity that has no pattern, no 'order' to speak of. These two ends of the continuum are not unrelated, however, since, as argued in Chapter Four, it is often the very

notion of the incest prohibition that allows the 'danger' end to construct incest as perverse, the breaking of the universal prohibition. There are also a number of ways of speaking about incest that operate somewhere in between these two extremes. Feminism is one of these, as is psychoanalysis. The implications this continuum has for feminism is that feminism cannot regard itself as unrelated to the other ways of speaking, and must be(a)ware of speaking in ways which might be construed and used as a different argument. Uncritically upholding the notion of the incest prohibition as a Truth, for example, has been one way in which some feminist writing comes close to other ways of speaking. It also allows feminism to see its own arguments in relation to all the other ways of speaking about incest. Analysing the commission of incest has been a project for those with an interest in clinical practice, with abused and abusers, for those with an interest in cultural variation and for those with an interest in deviance, refusing to obey social rules. For feminism, understanding incestuous abuse is about understanding the operations of power in society, the transmission and productivity of knowledge, and about the meaning of 'sexuality' in male supremacist societies. It is this range of different ways of speaking about incest that I traced in Chapters Six and Seven at the site of law.

There were several reasons for turning to law. Feminists were part of the campaigns around the English law (Jeffreys, 1985) and Foucault's work has already been influential in feminist theorising of law (as discussed in Chapter Five). Importantly, the law is the one place where incest is straightforwardly prohibited. My interest in incest law is not, therefore, simply as a site at which incest was spoken about, an accessible discourse to investigate. It is the statement of juridico-discursive power. What I have argued in Chapters Six and Seven is that this juridical statement is based upon and relies upon an array of ways of speaking about incest, including bio-political knowledges of incest. That is, the juridical statement conceals the negotiations and power/knowledge strategies which have created it. It is knowledges, especially in the debates of the 1980s but also in the earlier debates, that dominate discussions. The law is a discourse in which power and knowledge meet as a creative force.

The different ways of speaking construct incest differently. Chapter Six illustrated this point by tracing the image of incest constructed through the debates. Through four questions concerning the image of incest being constructed, I illustrated how the object incest that is under discussion is also under construction. Whether, where, what, who and victimising whom? are all questions that arise in the debates (without ever being explicitly asked in so direct or comprehensive a fashion). In setting up the question of what images of incest are constructed in the debates, the next question was where do these

images come from? I have argued that many of these ways of speaking draw upon (bio-political) knowledges of incest. Chapter Seven pressed the argument further, arguing that these knowledges and ways of speaking about incest function to construct both the object 'incest' and its specificity as a crime. That is, they map out what is wrong with incest such that every instance is wrong, even where both parties consent and there is no danger of procreation. The various truths of incest meet and 'battle' at the site of law. It is this battle of truths that leads to the legal Truth of incest. No one knowledge was sufficient on its own to operate as the knowledge base of the law. The various knowledges and assertions of incest interweave, often contradicting each other, only on occasion clashing directly. The different ways of speaking are such that they may be conceptualised as existing along the continuum of ways of speaking about incest. At times, incest is related to marriage and the family (system of alliances), at others it is related to the dysfunctional family or psychological perversity (the deployment of sexuality). It has been particularly interesting to see how the knowledges, even as they problematise incest differently, can function in accordance with one another. For example, the way in which the construction of incest as causing psychological problems in the child abused extends the danger of incest into the future as had the inbreeding arguments against incest.

These legal debates are clearly a site at which sex has been 'put into discourse'. They reveal the ways in which power/knowledges which have variously constructed 'the problem of incest' have come together and recreated the object of their discourses in such a way as to create the further truth of incest to be inscribed in law. Feminist knowledge does not compete at this stage with the Law, but with the other knowledges and ways of speaking about incest. Although it is often consonant with these other constructions of incest, feminist knowledge was barely articulated in these debates.

Together the collection of ways of speaking about incest as wrong map out a space for incest as a specific crime. The end result of this battle, this fluid rush of competing images, is the statute, a moment at which the battle is denied and fixed. The Truth of incest is 'agreed'. This Truth will provide the point of departure for the next legal battle, the battle in the courtroom, where the object 'incest' may again be contested.

APPENDIX I

THE ACTS

Anent thame that committis incest.

- 15 ITEM, Forfamekle as the abhominabill, vile, and fylthie lust of incest, is fwa abhominabill in the pre-
fence of God, and that the famin eternall God be his
expres word hes condāpnit the famin, and git not-
theles the faid vice is fwa vfit within this Realme,
and the word of God is in sic fort contemptnit, be
the vfaris thairof, that God be his iust iugementis hes
occafoun to plague the Realme, quhair the faid vice
is committit, (without God of his mercy be mair
gracious, and remeid be prouydit, that the faid vice
ceis in tyme cuming) . Thairfoir our Souerane Lord,
with auife and consent of my Lord Regent, and thre
Estatis of this present Parliament, statutis, and ordanis,
that quhatfumeuer persoun, or personis, committeris
of the faid abhominabill cryme of incest, that is to
fay, quhatfumeuer person, or personis thay be that
abusis thair body with sic personis in degre, as Goddis
word hes expresselie forbiddin, in ony tyme cuming,
as is contenit in the . xvij . Cheptour of Leuiticus,
falbe puneist to the deith .



CHAPTER 45.

An Act to provide for the punishment of Incest.

A.D. 1908.

[21st December 1908.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—(1) Any male person who has carnal knowledge of a female person, who is to his knowledge his grand-daughter, daughter, sister, or mother, shall be guilty of a misdemeanour, and upon conviction thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not less than three years, and not exceeding seven years, or to be imprisoned for any time not exceeding two years with or without hard labour : Provided that if, on an indictment for any such offence, it is alleged in the indictment and proved that the female person is under the age of thirteen years, the same punishment may be imposed as may be imposed under section four of the Criminal Law Amendment Act, 1885 (which deals with the defilement of girls under thirteen years of age).

Incest by males.

48 & 49 Vict. c. 69.

(2) It is immaterial that the carnal knowledge was had with the consent of the female person.

(3) If any male person attempts to commit any such offence as aforesaid, he shall be guilty of a misdemeanour, and upon conviction thereof shall be liable at the discretion of the court to be imprisoned for any time not exceeding two years with or without hard labour.

(4) On the conviction before any court of any male person of an offence under this section, or of an attempt to commit the same, against any female under twenty-one years of age, it shall be in the power of the court to divest the offender of all authority over such female, and, if the offender is the guardian of such female, to remove the offender from such guardianship, and in any such case to appoint any person or persons to be the

A.D. 1908. guardian or guardians of such female during her minority or any less period:

Provided that the High Court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect.

Incest by females of or over sixteen.

2. Any female person of or above the age of sixteen years who with consent permits her grandfather, father, brother, or son to have carnal knowledge of her (knowing him to be her grandfather, father, brother, or son, as the case may be) shall be guilty of a misdemeanour, and upon conviction thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not less than three years, and not exceeding seven years, or to be imprisoned with or without hard labour for any term not exceeding two years.

Test of relationship.

3. In this Act the expressions "brother" and "sister" respectively, include half-brother and half-sister, and the provisions of this Act shall apply whether the relationship between the person charged with an offence under this Act and the person with whom the offence is alleged to have been committed, is or is not traced through lawful wedlock.

Prosecution of offences.
22 & 23 Vict.
c. 17.

4.—(1) An offence under this Act shall be deemed to be an offence within, and subject to, the provisions of the Vexatious Indictments Act, 1859, and any Act amending the same.

(2) A court of quarter sessions shall not have jurisdiction to enquire of, hear, or determine any indictment for an offence against this Act, or for an attempt to commit any such offence.

(3) If, on the trial of any indictment for rape, the jury are satisfied that the defendant is guilty of an offence under this Act, but are not satisfied that the defendant is guilty of rape, the jury may acquit the defendant of rape and find him guilty of an offence under this Act, and he shall be liable to be punished accordingly.

If, on the trial of any indictment for an offence under this Act, the jury are satisfied that the defendant is guilty of an offence under sections four or five of the Criminal Law Amendment Act, 1885, but are not satisfied that the defendant is guilty of an offence under this Act, the jury may acquit the defendant of an offence under this Act and find him guilty of an offence under sections four or five of the Criminal Law Amendment Act, 1885, and he shall be liable to be punished accordingly.

(4) Section 4 of the Criminal Evidence Act, 1898, shall have effect as if this Act were included in the schedule to that Act.

Proceedings to be held in camera.

5. All proceedings under this Act are to be held in camera.

Sanction of Attorney-General.

6. No prosecution for any offence under this Act shall be commenced without the sanction of His Majesty's Attorney-General, but this section shall not apply to any prosecution commenced by or on behalf of the Director of Public Prosecutions.

EDW. 7.] *Punishment of Incest Act, 1908.*

[Ch. 45.] A.D. 1908.

7. This Act shall not extend to Scotland.

Extent.

8. This Act may be cited as the Punishment of Incest Act, 1908, and shall come into operation on the first day of January thousand nine hundred and nine.

Short title and
commence-
ment.

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FOR

HOWLAND BAILEY, Esq., M.V.O., the King's Printer of Acts of Parliament.

8.—(1) It is an offence, subject to the exception mentioned in this section, for a man to have unlawful sexual intercourse with a woman who is under care or treatment in an institution, certified house or approved home within the meaning of the Mental Deficiency Act, 1913, or placed out on licence therefrom or under guardianship under that Act.

PART I
—cont.

Intercourse
with defective.

(2) A man is not guilty of an offence under this section because he has unlawful sexual intercourse with such a woman, if he does not know and has no reason to suspect her to be a defective.

9.—(1) It is an offence, subject to the exception mentioned in this section, for a person to procure a woman who is a defective to have unlawful sexual intercourse in any part of the world.

Procurement
of defective.

(2) A person is not guilty of an offence under this section because he procures a defective to have unlawful sexual intercourse, if he does not know and has no reason to suspect her to be a defective.

Incest

10.—(1) It is an offence for a man to have sexual intercourse with a woman whom he knows to be his grand-daughter, daughter, sister or mother.

Incest by a
man.

(2) In the foregoing subsection "sister" includes half-sister, and for the purposes of that subsection any expression importing a relationship between two people shall be taken to apply notwithstanding that the relationship is not traced through lawful wedlock.

11.—(1) It is an offence for a woman of the age of sixteen or over to permit a man whom she knows to be her grandfather, father, brother or son to have sexual intercourse with her by her consent.

Incest by a
woman.

(2) In the foregoing subsection "brother" includes half-brother, and for the purposes of that subsection any expression importing a relationship between two people shall be taken to apply notwithstanding that the relationship is not traced through lawful wedlock.

Unnatural offences

12.—(1) It is felony for a person to commit buggery with another person or with an animal.

Buggery.

(2) Section thirty-nine of this Act (which relates to the competence as a witness of the wife or husband of the accused) does not apply in the case of this section, except on a charge of an offence with a person under the age of seventeen.

ELIZABETH II



Incest and Related Offences (Scotland) Act 1986

1986 CHAPTER 36

An Act to make provision for Scotland in respect of incest and related offences. [18th July 1986]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. After section 2 of the Sexual Offences (Scotland) Act 1976 there shall be inserted the following sections—

Incest and
related
offences.

"Incest. 2A.—(1) Any male person who has sexual intercourse with a person related to him in a degree specified in column 1 of the Table set out at the end of this subsection, or any female person who has sexual intercourse with a person related to her in a degree specified in column 2 of that Table, shall be guilty of incest, unless the accused proves that he or she—

1976 c. 67.

(a) did not know and had no reason to suspect that the person with whom he or she had sexual intercourse was related in a degree so specified; or

- (b) did not consent to have sexual intercourse or to have sexual intercourse with that person; or
- (c) was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

TABLE
DEGREES OF RELATIONSHIP

Column 1	Column 2
<i>1. Relationships by consanguinity</i>	
Mother	Father
Daughter	Son
Grandmother	Grandfather
Grand-daughter	Grandson
Sister	Brother
Aunt	Uncle
Niece	Nephew
Great grandmother	Great grandfather
Great grand-daughter	Great grandson
<i>2. Relationships by adoption</i>	
Adoptive mother or former adoptive mother.	Adoptive father or former adoptive father.
Adopted daughter or former adopted daughter.	Adopted son or former adopted son.

(2) For the purpose of this section, a degree of relationship exists in the case of a degree specified in paragraph 1 of the Table—

- (a) whether it is of the full blood or the half blood; and
- (b) even where traced through or to any person whose parents are not or have not been married to one another.

(3) For the avoidance of doubt sexual intercourse between persons who are not related to each other in a degree referred to in subsection (1) above is not incest.

Intercourse
with
step-child.

2B. Any step-parent or former step-parent who has sexual intercourse with his or her step-child or former step-child shall be guilty of an offence if that step-child is either under the age of 21 or has at any time before attaining the age of 18 lived in the same household and been treated as a child of his or her family, unless the accused proves that he or she—

- (a) did not know and had no reason to suspect that the person with whom he or she had

sexual intercourse was a step-child or former step-child; or

- (b) believed on reasonable grounds that that person was of or over the age of 21 years; or
- (c) did not consent to have sexual intercourse or to have sexual intercourse with that person; or
- (d) was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

Intercourse of person in position of trust with child under 16.

2C.—Any person of or over the age of 16 years who—

- (a) has sexual intercourse with a child under the age of 16 years;
- (b) is a member of the same household as that child; and
- (c) is in a position of trust or authority in relation to that child,

shall be guilty of an offence, unless the accused proves that he or she—

- (i) believed on reasonable grounds that the person with whom he or she had sexual intercourse was of or over the age of 16 years; or
- (ii) did not consent to have sexual intercourse or to have sexual intercourse with that person; or
- (iii) was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

Proceedings and penalties for offences under ss. 2A to 2C.

2D.—(1) Proceedings in respect of an offence under section 2A, 2B or 2C of this Act may be brought on indictment or, if the Lord Advocate so directs, on a summary complaint before the sheriff.

(2) Summary proceedings in pursuance of this section may be commenced at any time within the period of 6 months from the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge.

(3) Subsection (3) of section 331 of the Criminal Procedure (Scotland) Act 1975 (date of commencement of summary proceedings) shall have effect for the purposes of subsection (2) above as it has effect for the purposes of that section.

(4) For the purposes of subsection (2) above, a certificate of the Lord Advocate as to the date on which the evidence in question came to his knowledge is conclusive evidence of the date on which it did so.

(5) Subject to subsection (6) below, a person guilty of an offence under section 2A, 2B or 2C of this Act shall be liable—

(a) on conviction on indictment in the High Court of Justiciary, to imprisonment for any term of imprisonment up to and including life imprisonment;

(b) on conviction on indictment before the sheriff, to imprisonment for a term not exceeding 2 years; and

(c) on summary conviction, to imprisonment for a term not exceeding 3 months.

(6) Before passing sentence on a person convicted of any such offence, the court shall—

(a) obtain information about that person's circumstances from an officer of a local authority or otherwise and consider that information; and

(b) take into account any information before it which is relevant to his character and to his physical and mental condition.

(7) In subsection (6) above, "local authority" has the meaning assigned to it by section 1(2) of the Social Work (Scotland) Act 1968."

1968 c. 49.

Consequential
amendments
and repeals.

2.—(1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments set out in that Schedule, being amendments consequential on the provisions of this Act.

(2) The enactments specified in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Short title,
commence-
ment and
extent.

3.—(1) This Act may be cited as the Incest and Related Offences (Scotland) Act 1986.

(2) This Act shall come into operation on such day as the Secretary of State may appoint by order made by statutory instrument.

(3) An order made under subsection (2) above may contain such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with the coming into operation of this Act.

(4) This Act extends to Scotland only.

SCHEDULES

SCHEDULE 1

Section 2(1).

CONSEQUENTIAL AMENDMENTS

The Criminal Procedure (Scotland) Act 1975 (c. 21)

1. In section 171(3) (presumption and determination of age of child), for the words "(b) to" there shall be substituted the words "(c) and" and after the word "section" there shall be inserted "2A,".

2. In section 331(2) (statutory offences time limit), after the words "mentioned in" there shall be inserted the words "paragraph (d) of".

3. In section 368(3) (presumption and determination of age of child), for the words "(b) to" there shall be substituted the words "(c) and" and after the word "section" there shall be inserted "2A,".

The Sexual Offences (Scotland) Act 1976 (c. 67)

4. At the beginning of section 4(1) (intercourse with girl between 13 and 16), there shall be added the words "Without prejudice to sections 2A to 2D of this Act".

The Adoption (Scotland) Act 1978 (c. 28)

5. At the end of section 41(1) (status conferred in Scotland by adoption), there shall be added the words "and incest.".

Section 2(2).

SCHEDULE 2

ENACTMENTS REPEALED

Session and Chapter	Short title	Extent of repeal
1567 c. 15.	The Incest Act 1567.	The whole Act.
1 & 2 Geo. 6. c. 48.	The Criminal Procedure (Scotland) Act 1938.	The whole Act.
1975 c. 21.	The Criminal Procedure (Scotland) Act 1975.	In Schedule 1, paragraph (b).

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APPENDIX II

OTHER RELEVANT OFFENCES IN SCOTS LAW

(Reproduced from the Scottish Law Commission Report 1981)

From Scottish Law Commission

No. 69

The Law of Incest in Scotland.

H.M.S.O.: Edinburgh.

Other relevant offences

3.7 Apart from incest, there are other provisions of the criminal law which relate to sexual intercourse.

(a) With regard to females

(i) Rape is criminal in the case of any female victim, regardless of her age;² clandestine injury to women is the crime of having sexual intercourse with a female above the age of puberty who is unable to consent (for example, because she is asleep);³ in certain circumstances, the crime of fraud might extend to cover intercourse with a woman whose consent was obtained or induced by fraud.⁴ All of these are crimes at common law and the maximum penalty on indictment is life imprisonment. The factor common to all of them is the lack of consent on the part of the female.

(ii) Section 4 of the Sexual Offences (Scotland) Act 1976⁵ makes it an offence to have (or attempt to have) sexual intercourse with a girl of or above the age of 13 years and under the age of 16 years. The

¹ One commentator suggested that the prohibited degrees for incest and marriage should be the same.

² Hume, i. 302; Burnett, 101; Alison, i. 209; Macdonald, 119; Gordon, 33-03.

³ *Chas. Sweeney* (1858) 3 Ir. 109; *Wm. Thomson* (1872) 2 Couper 346; *H.M. Advocate v. Giranger and Rae* 1932 J.C. 40; Macdonald, 120; Gordon 33-21. Strictly speaking, this offence applies regardless of the age of the female, but intercourse with a female less than 12 years of age is rape at common law.

⁴ Gordon, 33-05.
⁵ c. 67

infringement on summary complaint. This offence will normally only be charged where the female consents to intercourse, since otherwise such intercourse would constitute rape.

(iii) Section 3 of the Sexual Offences (Scotland) Act 1976 makes it an offence to have sexual intercourse with a girl under the age of 13 years. The maximum penalty on indictment is life imprisonment, but the penalty for attempting the offence is restricted to maxima of 2 years imprisonment on indictment or 3 months imprisonment on summary complaint. The offence is committed whether or not the girl consented to the intercourse. Sexual intercourse with a girl under the age of puberty (i.e. 12 years) also constitutes the crime of rape at common law.¹

(b) With regard to males

(i) It is not rape for a woman to force a male person to have intercourse with her.² A male person cannot be raped.

(ii) Lewd, indecent and libidinous practices and behaviour towards a male under the age of puberty (i.e. 14 years) is a criminal offence at common law³ with a maximum penalty on indictment of life imprisonment. This crime would apply whether or not the boy consented to sexual intercourse.

(iii) Sexual intercourse with a male over the age of 14 years against his consent could be charged as indecent assault, a common law offence with a maximum penalty of life imprisonment on indictment.⁴

3.8 As will be seen from the above, where the female consents to intercourse, no other relevant offence is committed if she is over the age of 16 years.⁵ In so far as the male is concerned it appears that no other relevant offence is committed if he consents to the act of intercourse and is over the age of 14 years. Incest is therefore the only provision of the criminal law which prohibits intercourse in such cases.

¹ Hume, i. 303; Alison, i. 213; Macdonald, 119; Gordon 33-14. Lewd, indecent and libidinous practices and behaviour is a common law crime (Gordon, 36-09) which would also cover intercourse with a girl under the age of puberty, but in practice, since such intercourse can also be charged as rape, the latter charge would always be preferred. The Sexual Offences (Scotland) Act 1976 (c. 67), s. 5, makes statutory provision for penalising lewd practices with a girl above the age of 12 years and under the age of 16 years.

² Gordon 33-04. In the indictment in the case of *H.M. Advocate v. Edith Beaton and James Vaughan* 1979 S.L.T. 49, an incest case, the charge alleged that the two accused forced Mrs Beaton's 11-year-old son "to lie in bed with you and did force his penis into the vagina of you (Mrs) Beaton and did cause him to have incestuous intercourse with you". If the crime of incest were abolished, such behaviour could not be charged as rape of the male person, but only as lewd, indecent and libidinous practices and behaviour or indecent assault.

³ Gordon, 36-09.

⁴ Gordon, 29-24. It might be possible to extend the common law crime of shameless indecency to cover certain instances of intercourse between a woman and a male child, but this is conjecture; this crime is based on the statement that "all shamelessly indecent conduct is criminal"—Macdonald, 150; Gordon, 36-19; as a common law crime, the maximum penalty on indictment is life imprisonment.

⁵ If the female is aged between 13 and 16 years, the maximum penalty under section 4 of the Act of 1976 would be 2 years imprisonment.

APPENDIX III

ARTICLE:

'Beyond the 'Thorny Question': Feminism, Foucault and the
Desexualisation of Rape'

(Permission has been obtained from Academic Press to reproduce this article here)

Beyond the Twitty Question: Feminism, Foucault and the Desexualisation of Rape

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Rape is an act of aggression in which the victim is denied her self-determination. *It is an act of violence* which, if not actually followed by beatings or murder, nevertheless always carries with it the threat of death. Susan Griffin, 1971 (reprinted 1982: 57, italics added).

Rape is first and foremost a crime of violence against the body and only secondarily (although importantly) a sex crime. Susan Rae Peterson (1977: 364).

I do not agree with the analysis of rape as a physical assault and will attempt to show that it is sexual. Delia Dumaesq (1981: 42).

If we say these things [rape, sexual harassment, pornography, battery] are abuses of violence not sex we fail to criticise what has been done to us through sex. Catharine McKinnon, 1981 (1987: 86).

The question of whether rape is or is not 'about' sex continues to be regarded as a "thorny question" (Smart, 1989: 43). The purpose of this article is to suggest that the form in which this question is posed is often unhelpful to an appreciation of the arguments of the various contributors to the debate. My argument has two parts. First, it is argued that interrogating the term 'sex' shows that it is used in a variety of ways in this debate, so that the proposition that rape is (or is not) sexual can be an attempt to convey quite different perspectives. Secondly, it is argued that although this issue has been framed as if it involved either just one term (is rape about sex?) or as if it involved two (is rape about sex or violence?), there are actually three pivotal terms to be confronted: sex, violence and power. It is the configurations of this triangle of terms, and the meanings accorded them, which, it is argued, distinguishes the positions of the contributors. The article is not, therefore, an attempt to answer the question 'is rape about sex?', but has its more humble aim in demonstrating

ing a need to dispose with the question in its present formulation. That is, the question should no longer be set up as if it involved two camps—those who argue that rape is about sex and those who argue it is not, or those who argue that rape is about sex and those who argue that it is about violence—because this formulation forces the complexities of the arguments into the two camps, thereby concealing any similarity of argument *across* camps, as well as the differences *within* each camp.

The first section of the article presents, by way of introduction, an exchange between Michel Foucault and Monique Plaza which addressed exactly this issue. In a seminar on rape, Foucault seems to be advocating the punishment of rape as an act of violence, and not as a sexual offence (1977: 99; Kritzman, 1988: 200–4)[1]. This suggestion, termed here 'desexualisation', can be seen to be premised on Foucault's theoretical arguments of 'The History of Sexuality: An Introduction' (1981). In her reply to Foucault, the French feminist writer Monique Plaza argues that one cannot regard rape as not about sex.

This exchange between Foucault and Plaza is used as the point of entry into the discussion in this article, for although it might be described as a debate between Foucault and feminism, it also has interesting resonances within feminist debate. The above quotations show how feminist work seems to have shifted from a stress on the violence of rape to the argument that one should *not* 'take the sex out' of the analysis of rape. The second section considers the apparent similarity between Foucault and early feminist work, as noted by De Lauretis (1987: 36), insofar as the latter might also be seen as proposing the 'desexualisation' of rape. It is argued, however, that clarifying the various positions on this debate is not simply a matter of tracing a historical shift in feminist thought (although this may be a part of it), with Foucault in agreement with the earlier. Instead, it is suggested that appreciation of the various positions is better achieved first, through a clarification of the use of the term 'sex' in the arguments, because its meaning shifts, and secondly, through an analysis that reflects the fact that there are three terms—sex, violence and power—the different configurations of which differentiate positions.

I The 'Desexualisation' Strategy of Michel Foucault and Plaza's Reply

'Desexualisation': Foucault on the Body, Sex and Rape

Introducing the issue of rape into a seminar on repression (1977; Kritzman, 1988), Foucault presented a dilemma for comment. Although he believed as a matter of principle that "in no circumstances should sexuality be subject to any kind of legislation whatever", rape is one area which "for me present[s] a problem" (1988: 200). He goes on to argue:

(One can always produce the theoretical discourse that amounts to saying: in any case, sexuality can in no circumstances be the object of punishment.

And when one punishes rape one should be punishing physical violence and nothing but that. And to say that it is nothing more than an act of aggression: that there is no difference, in principle, between sticking one's fist into someone's face or one's penis into their sex (Kritzman, 1988: 200).

In effect, Foucault could be seen as arguing for a 'desexualisation' of rape, a term he used himself in a slightly different context. In an interview Foucault once argued that the Women's Liberation Movement was a movement of 'desexualisation', because women were demanding that their lives no longer be regarded in terms of their sex, but that their situation be addressed in terms of power inequalities, for this is what 'the woman question' is really about. Foucault argues:

The real strength of the women's movement is not that of having laid claim to the specificity of their sexuality and the rights pertaining to it, but that they have actually departed from the discourse conducted within the apparatuses of sexuality . . . a veritable *de-sexualisation*, a displacement effected in relation to the sexual centering of the problem (Gordon, 1980: 219).

In the seminar Foucault seems to suggest that his dilemma would be solved if rape were treated as an assault of violence and not as a sexual crime. But what is the source of Foucault's dilemma? Why should he want to 'desexualise' rape? These questions are answered by placing Foucault's comments in the context of his arguments in *The History of Sexuality: An Introduction* which had just been published in France at the time of his remarks, and in which sexuality is posited as a way in which the body is caught within contemporary power/knowledge relations.

Although in the seminar Foucault initially presents his dilemma in terms of not wishing to legislate against sexuality, it becomes clear in the ensuing discussion that it is the notion of some part or parts of the body being constructed as 'sex', and consequently treated as special and as more important than other parts of the body, to which Foucault objects.

Foucault: The answer from both of you [the two women present] . . . was very clear when I said: [rape] may be treated as an act of violence, possibly more serious, but of the same type, as that of punching someone in the face. Your answer was immediately: No—it's quite different. It's not just a punch in the face, but more serious.

Marine Zecca [2]: Of course!

Foucault: Then there are problems, because what we're saying amounts to this, sexuality as such, in the body, has a preponderant place, the sexual organ isn't like a hand, hair, or a nose. It therefore has to be protected, surrounded, invested in any case with legislation that isn't that pertaining to the rest of the body. (Kritzman, 1988: 201–2).

position to be, Foucault is questioning the way in which we talk about sex. He is asking them: is this really what the genitalia are? What makes them so different from other parts of the body? Through this (their) way of talking, he argues, sex is constructed as located in certain parts of the body, and, furthermore, it is constructed as a special or privileged part of the body. It is this way of talking about sex, and legislation to protect this part of the body which continues this way of talking, with which Foucault seems to be uncomfortable. Why?

In *The History of Sexuality: An Introduction*, one of Foucault's main arguments is that the notion of sexuality has been historically produced and deployed throughout our society through the operation of power/knowledge networks. Whereas previously sexual acts were regarded as simply acts of the body, whose actors would be punished if the form of these acts 'went against nature', Foucault argues that since the beginning of the nineteenth century, sexual acts have been spoken about as if they were expressions of something much deeper within the individual: 'sexuality'. Thus there is now the category of the 'homosexual' rather than the act of sodomy. Acts have been replaced by identities, and pleasures replaced by orientations that are widely regarded as innate: "the sodomite had been a temporary aberration; the homosexual was now a species." (1981: 43). The notion of sexuality is a discursive formation, argues Foucault, not a fact nor property of the body. Sexuality does not arise from the sex of the body, as the conflation of sex, gender and heterosexuality might suggest (Butler, 1990). This is merely the way we talk about sex.

Foucault regards this process as part of a transition in the way power operates in relation to sex. It no longer operates in the way Foucault characterises as the legal formulation of 'thou shalt not', laying down the law concerning the licit and the illicit. Instead, power is more productive, producing subjects with 'sexualities'. Individuals take on a sexuality as part of their identity, and become attached to it as a truth, a key to the self. Sexuality is, for Foucault, a modern technology of the self, a way in which individuals turn themselves into subjects (1982: 208). The power which operated with regard to sex in the last century, Foucault suggests, was not a repressive power acting to eliminate unproductive extramarital sex as is generally believed, but

had neither the form of the law, nor the effects of taboo. On the contrary, it acted by a multiplication of singular sexualities. It did not set boundaries for sexuality; it extended the various forms of sexuality, pursuing them according to lines of indefinite penetration. It did not exclude sexuality, but included it in the body as a mode of specification of individuals. (1981: 47).

'The formation of knowledge should not be separated from the operation of power, argues Foucault, for where a knowledge of sexuality or criminality, for

does not suppress knowledge, argues Foucault, but, in the social sciences, is tied to it. The knowledge formed through the organisation of the prison, for example, cannot be considered independently of the power relations operating there. Similarly, the 'truths' about sexuality do not exist outside the operations of these power/knowledge networks. Power operates, moreover, on the body, ordering it as it studies, organising its movements as it observes, categorising as it probes. In this way, power, or power/knowledge, produces our understanding of the body. The body is interrogated as to the truths it reveals of the individual within, and different parts of the body are attached to different fields of knowledge.

To regard the genitalia as something other than a part of the body, to mark them as a part of the body which require special treatment, is exactly what Foucault argues the deployment of sexuality has been doing over the past two hundred years. The body is "the inscribed surface of events (traced by language and dissolved by ideas)" (in Bouchard, 1977: 148). Thus the discourses that form the deployment of sexuality 'anchor' the concept of sexuality in the body, by giving it a special place there, whilst these discourses constructing sexuality proliferate.

As a resistance to the deployment of sexuality, therefore, Foucault seems to be arguing in the debate on rape that we should refuse to see the sex of our bodies, i.e. the genitalia, as anything more than or different from another part of the body, such as the fist or mouth. To treat rape as a sexual crime separates it out from other crimes of violence against the body and colludes in this sense with the deployment of sexuality. It is from this perspective, in accordance with *The History of Sexuality*, that Foucault seems to be making his suggestion that rape should not be defined as an offence different from a physical assault. To refuse to do so might undermine in some way the power mechanisms of the deployment of sexuality and the knowledge on which it is founded. Rape, *insofar as its specificity rests on a notion of the genitalia as different from and more important than other parts of the body*, as following different laws and requiring different treatment, is about the operation of power/knowledge and its ordering of the body. Refusing to take part in a legal discourse that is complicit with this ordering, is from Foucault's perspective, a challenge to the operations of the deployment of sexuality.

Plaza's Retort: Rape is About Sex

The French feminist writer Monique Plaza has confronted Foucault on his comments on rape [3]. Plaza argues that rape is about sex. Rape is usually regarded as sexual in the sense that it involves the genitals, but Plaza argues that it is not this that leads her to argue, *contra* Foucault, that rape is a sexual crime which should be regarded as such. Rape does not have to involve the genitals, she contends, since the introduction of a bottle held by a man into the

able) imitation of a legal behaviour, would just not be dealt with in the same way as a physical assault. Furthermore, Foucault's suggestion would exacerbate an existing problem because rape is already treated as a physical assault to the extent that it is the aspect of assault that is in practice looked to by the authorities in order to distinguish rape from consensual heterosexual intercourse.

Plaza argues that women are the hardest hit by the "machinery" of the deployment of sexuality described by Foucault, and that they cannot afford to jump into the realm of the ideal and pretend that here and now, sex (the genitals) is the same as other parts of the body. Thus Plaza would agree with the position that Foucault summarises disapprovingly in the debate: "[Sex] must . . . be protected, surrounded, at any rate, provided with legislation which does not apply to the rest of the body." (Kritzman, 1988: 202).

Whether or not it is possible to evaluate the impact and prove that women are the hardest hit by the deployment of sexuality, it is clear that the most effective weapon that Plaza has against Foucault is in the illustration that in practice and at this moment in time, the implementation of his ideas would work to the detriment of the woman raped (Stern, 1980). Importantly, Plaza states that the ideas in themselves she has no direct quarrel with. In fact she argues that they are in part, "abstractly (idealistically) correct" (1980: 28). This, she suggests, is what makes them all the more pernicious. Her critique stages a politicisation of Foucault's remarks, looking at the implications from the raped woman's point of view, and this leads her to suggest that Foucault has not considered the "enunciative modality" of his own discourse, of which he wrote in *The Archaeology of Knowledge* (1972) and which he defines as the place from which the author of a discourse speaks, giving coherence to what s/he says.

II 'Desexualisation' as a Feminist Analysis?

As mentioned above, feminist work in the 1970s tended to argue that rape was an assault, an act of violence, and was not about sex (Griffin, 1971; Russell, 1975; Brownmiller, 1975). As noted by De Lauretis (1987: 36), these analyses could, therefore, be regarded as employing a "desexualisation" strategy similar to Foucault's. In this section, however, it will be argued that to assimilate these works with Foucault's position is to conceal important differences in their positions.

The feminist position on rape in the 1970s was a reaction against the ways in which rape was typically viewed (in court as well as by public opinion) as the result of a pent-up male sexual need. For example, Melani and Fodaski argued that "rape is fundamentally an aggressive rather than a sexual act, . . . its motivation and dynamics arise out of hostility rather than sexual need" (1974: 82). Russell, too, argued that from the experiences recounted to her by survivors of rape, it seemed, "some rapists are not motivated by a sexual urge;

anus or a woman would also be raped. Her argument is not that more areas of the body should be regarded as sexual, but that attention needs to be directed away from parts of the body and toward the actors involved. It is "social sexing" which makes rape sexual, in Plaza's view, by which she means it opposes men and women. Thus she argues that "rape is an oppressive practice employed by a (social) man against a (social) woman" (1980: 31).

The bracketed term "social" is used by Plaza to convey her belief that although a biological man can also be raped, in the process he is placed in the position of a woman. That is, "the anus of a man can be placed in the position of 'the sex' or furthermore a (biological) man can be put in the place of the 'body of women' and can be appropriated as such." (1980: 31). Thus she argues that when a man is raped, he is constituted as feminine in that act. Her argument is therefore that one has to discuss rape in terms of gender. It is *social* sex, not biological sex that rape is about.

Plaza suggests that Foucault has overlooked his own argument in *The History of Sexuality* in which he speaks of the three ways in which sex has been defined:

as that which belongs in common to both men and women; as that which belongs par excellence to men, and hence is lacking in women; but at the same time as that which by itself constitutes woman's body, ordering it in terms of the functions of reproduction (1981: 153).

If men rape women, argues Plaza, it is precisely because women have been so defined, because they are women in a social sense, because they are "the sex". Plaza argues that:

Men rape women in so far as they belong to a class of men who have appropriated the bodies of women. They rape what they have learnt to consider their property . . . the class of women (which . . . can also contain biological men) (1980: 32).

Plaza also argues her rejection of Foucault's comments through a different line of attack. She argues that, in practical terms, taking rape out of its present place in law as Foucault advocates, would mean permitting rape, and she illustrates her point through contrasting reactions to a report of a punch in the face with reactions to a report of rape. Punching someone in the face is generally conceived as a criminal assault, and one would generally expect sympathetic treatment if one wished to report the offender to the police. On the other hand, argues Plaza, because placing the penis into the vagina is not an action generally considered as an assault, but is identified as heterosexual intercourse, reporting rape to the authorities sets in motion a series of questions that runs "but you have no lesions, where is the sperm? you did not consent? where are your witnesses?" (1980: 32). Rape, because of its (debat-

are different analyses behind what may at first glance appear the same 'desexualisation' strategy. This crucial distinction has to be made within the 'camp' which has argued that rape is not about sex.

III The Different Meanings of 'Sex'

This desexualisation strategy of the early feminists may seem to be in contradiction with later feminist texts, which have argued that rape is about sex (Plaza, 1980; MacKinnon, 1982, 1987, 1989). One of the arguments of this section is that the earlier and later feminist texts are not necessarily in contradiction with each other because the meaning accorded the term 'sex' shifts. Since a link is then possible between the two camps (those who argue rape is about sex and those who argue it is not) doubt is cast on the formulation of the 'thorny question' as those who argue rape is about sex versus those who argue it is not.

It is clear that Plaza's argument that rape is about sex, that by punishing rape as simply violence one ignores the power relations between the sexes, is an attempt to reintroduce the term sex into the analysis of rape in response and in opposition to Foucault, *without* being in agreement with the sort of 'rape as sex' analysis which the early feminist work had dismissed. Similarly, the influential analysis offered by American feminist Catharine MacKinnon (1982, 1987, 1989) reintroduces the term sex into debates on rape, arguing that the term 'violence against women' fails to criticise sex and the ways in which women have been oppressed through sex, without taking up the conservative stance against which early feminist analyses fought (and still fight).

The issues that are thrown up here do direct one towards the tracing of a historical shift in feminist thought (Edwards, 1987). But the recognition of this shift does not seem to clarify sufficiently the issue of desexualisation. That is, it is more complex than simply an 'adding sex back in' in recognition of an earlier mistake of 'taking sex out' of feminist analyses of rape. Partly, it is argued here, this is because the term 'sex' operates differently in the analyses. It has several different meanings, so that the sex that was rejected by early feminists from the theorising of rape is not the same sex that has been added back in by later feminists. Nor, indeed, is the sex that is added back the same across all the later texts. This section will consider the way this term has been used in this specific debate in order to argue that its meaning needs to be clarified in order to ease the understanding of the different arguments involved.

My argument here, therefore, is that there are different meanings attached to the term 'sex', so that the dualistic structure of the question 'is rape about sex or not?' or even 'is rape about sex or violence?' works to conceal different usages, confusing the issues and foreclosing discussion of the different meanings. The purpose of this delineation, therefore, is not to solve the puzzle of

Feminists also argued that the fact that most rapes seemed to be planned, as revealed in an important study by Amir (1971) undermined the notion that rape was the consequence of the man's over-whelming sexual need (Wilson, 1983: 65).

The pioneering feminist work of this period began, furthermore, to theorise rape as a political act. The New York Radical Feminists introduced their collection of conference papers thus:

Through the technique of consciousness-raising, [we] discovered that rape is not a personal misfortune but an experience shared by all women in one form or another. When more than two people have suffered the same oppression the problem is no longer personal but political—and rape is a political matter. (Connell & Wilson, 1974: 1).

Brownmiller's (1975) influential analysis of rape argued that rape was a mechanism by which men maintained their power over women. The fact that only a sub-set of men do actually rape women, she argued, does not stop rape benefiting all men, because all women are kept in fear of rape: it is a process of intimidation that keeps all women wary of all men. Thus rape has a political function which is the maintenance of the power of men over women.

Canadian legal reform responded to feminist analyses in their revision of rape laws, regarding rape as a physical assault. Legal reform altered the rape laws so that in place of the crime of rape there was a graduated scheme distinguishing sexual assaults purely in terms of the level of violence involved and with no distinction between penetration and other sexual acts (Temkin, 1986: 34–5).

If this early work could be seen to be employing a 'desexualisation' strategy to the extent that it argued that rape was not about sex, it might appear that they were in agreement with Foucault's later, seemingly similar, suggestion. However, it is clear that this early feminist work argued that rape is not about sex for different reasons than does Foucault. Whereas Foucault argues that rape is not about sex in order to *escape* power's operations which, he argues, are discursively marking the body, the feminist work of the 1970s argued that rape was not about sex in order to *reveal* and *highlight* the power relations and politics that are involved in rape from a feminist perspective and that had been ignored by legal and media discourse on rape. They argued that rape is not about sex but is, instead, about power.

Thus Foucault's argument is based upon the notion that by punishing only the violence of rape, by effectively collapsing the crime of rape into the crime of assault, one avoids power, which would have one view rape as sexual. The early feminist work, on the other hand, argued that rape should be analytically divorced from sex in order to show how the act of rape is motivated not by sexual desire but by power, and, furthermore, occupies a privileged position in

i) *Sex as Anatomy*

Foucault's usage of the term sex in the debate on rape is limited (perhaps surprisingly, in view of the wide ranging concern with sex and sexuality in his writings), insofar as his suggestion that rape should not be regarded as a sexual crime utilises a notion of sex as a part of the body. Even though he is arguing against this notion, Foucault's argument, as interpreted above, is that the way in which the body is discursively marked means we construct certain parts of the body as more important than others. If sex has been spoken about as the key to our inner selves, the truth of the individual, as Foucault argues (1981), one might interpret his desexualisation argument as an attempt to undermine the meaning of rape as a grand transgression which makes it more upsetting for the woman than a physical assault (Woodhull, 1988: 170).

Although it is placed within a radically different analysis, therefore, Foucault uses the term sex as equivalent to the genitalia in the same way as a 'common sense' understanding of rape would regard it as a sexual crime. 'Sex', here, is part of the anatomy. For Foucault it is a shifting and unstable anatomy in that it is discursively drawn. In 'common sense' sex is a fixed part of the anatomy.

Incidentally, this meaning of sex is not absent from feminist analyses. In a sense, feminists could be seen to be in agreement with Foucault insofar as they decentre the genitalia in their definitions of sexual violence through the argument that the experience of rape does not rely upon penetration of the vagina by the penis. This is the sentiment behind references to sexual harassment or intimidation as 'little rapes' (Medea & Thompson, 1974), and Ward's (1984) argument, in reference to father-daughter rape, that sexual assaults are often experienced 'as rape' even if the assault would not legally be so defined. These arguments, might, therefore, be used by these feminists to argue that rape is not about sex if sex equals the genitals.

ii) *Sex as Sexuality*

As argued above, early feminist work tended to argue that sexual desire was not the motivation behind rape (Russell, 1975; Melani & Fodaski, 1974). This also appears to be the intended meaning behind the slogan that rape is not about sex, but about power. In contrast, Barry (1985) includes sexual satisfaction in the motivation behind sexual assaults. She argues that "in committing a crime against women, sexual satisfaction, usually in the form of orgasm, is one of the intended outcomes of sexual violence for the aggressor." (1985: 164). Whichever position is adopted, the question 'is rape about sex?' is translated

Other feminist work has argued that the social construction of sexuality is relevant to the analysis of rape, thus reintroducing the sex-as-sexuality meaning into the debate. These arguments, however, are no longer couched in terms of individual motivation and intention, but consider rape against the backdrop of the construction of male sexuality.

Catharine MacKinnon (1982, 1987, 1989) has been the most influential of the feminists adopting this stance. She argues that rape is about sex and that to fail to look at how it is connected with sex is to preserve the myth that sex is an untainted realm of mutual desire. She argues that "to say rape is violence not sex preserves the 'sex is good' norm by simply distinguishing forced sex as 'not sex'" (1989). For MacKinnon, rape is not less sexual for being violent (1989: 173).

MacKinnon's argument is that the construction of sexuality has to be central to the analysis of rape. Heterosexuality thus becomes the context in which rape is situated, and male (hetero)sexuality is interrogated for the ways in which violence and power are intertwined there: "[the] male sexual role... centres on aggressive intrusion on those with less power. Such acts of dominance are experienced as sexually arousing, as sex itself" (1989: 127). The violation of women, MacKinnon suggests, has been sexualised in Western culture. Recalling Foucault, although not naming him explicitly, she states that "a feminist analysis would suggest that assault by a man's fist is not so different from assault by a penis, not because both are violent but because both are sexual." (1989: 178). For MacKinnon, force is the "desire dynamic, not just a response to the desired object when desire's expression is frustrated." (1989: 186).

In this reading of MacKinnon, the term 'sex' in the arguments around whether rape is about sex or not, means sexuality. MacKinnon answers that rape is 'about' sex because it is 'about' sexuality, and the social (and gendered) construction thereof. Thus an act of rape is placed by MacKinnon within the context of the social construction of 'normal' male sexuality as aggressive and the assertion of dominance. This analysis also makes it possible to argue that rape is not as unlike 'normal' heterosexual intercourse as might be supposed, an argument that was not absent in the earliest feminist analyses (see Russell, 1975) where sex in marriage was found to have more in common with forced sex than with the ideal of mutual desire.

A different analysis of rape by Dumaresq (1981) also translates the argument that rape is about sex into an argument that it is about sexuality. Dumaresq's argument, however, is that rape is sexual because it is the site at which discourses converge to create a specific sexuality of the 'rape victim'. The media and juridical discourses on rape, she suggests, centre on the sexual intent/desire of the woman who has been raped, inquiring into her dress, behaviour and sexual history, thereby discursively constructing a sexuality of

ible with MacKinnon's argument that rape is about sex. Whereas MacKinnon seems to approach her theorising on rape from the standpoint of sex meaning sexuality, that then leads on to a consideration of gender through the argument that differential sexuality defines and distinguishes men and women, Plaza begins with sex meaning gender.

Nor does Plaza's argument seem to be in contradiction with early feminist analyses which argued that rape was not about sex, since it was these texts which began to argue that rape was entwined with the maintenance of power relations *between men and women*. The early work tended to place its emphasis on the power aspect of this analysis and contrasted this with a notion of rape as like the desire in consensual sexual intercourse. Nevertheless, they were acutely aware, of course, that rape opposed men and women, and argued that the power relations which were maintained were of a structure which kept men in a position of dominance over women (e.g. Brownmiller, 1975).

It is with the usage of sex as equivalent to genitalia that Plaza's usage is most obviously incompatible, or that she would regard as naïve. The argument that rape is about sex because it involved the genitalia is irrelevant to Plaza's argument, as she makes clear by suggesting that a bottle could replace the penis as the penetrating object. One could take the argument further, as some writers have done, and argue that penetration does not need to take place at all. Plaza's argument, however, is that rape is about sex because it is about the relations between women and men. Further, she suggests that rape is about the 'positionalities' of men and women with respect to each other, since a man can take the 'position' of a woman. If raped, a man is 'feminised'. Plaza's argument becomes, it seems, that rape is about sex in that it is about gender: the opposition of masculine and feminine. Divorced from the referent of the genitalia, sex becomes gender, and in her argument gender becomes behaviour. Thus rape is about sex because it is about the ways in which masculine people (who tend to have the genitalia that marks them 'men') are taught to treat feminine people (who, similarly, tend to be 'women').

In this section, the different usages of the term 'sex' in the desexualisation debate have been outlined. The purpose of this delineation is not to decide which is the correct usage, but merely to point out that the term is used in very different ways (which is not the same thing as saying they are incompatible). One implicit argument in this section and important conclusion for the article as a whole is that contributors who have been placed on opposing sides of the 'sex or not sex' divide, are in some cases using a different meaning of the term 'sex' such that their arguments are not in opposition as their places in opposite camps may suggest. This has been the case concerning early feminist work and, for example, the arguments of Plaza. Yet also, it has become clear that even those using the same meaning of the term 'sex' *and* both on the same 'side' of the desexualisation debate can be presenting quite different analyses of rape. This is the case with MacKinnon and Dumaresq. For these reasons, I

the 'true' rape victim. If she has behaved 'badly' she is not truly a victim of rape, but is regarded as somehow deserving of the rape, as revealed in the ways in which 'innocent women' who were attacked by the Yorkshire ripper were spoken about in the media as different from the women prostitutes who were similarly attacked. Through such discourses sexualities are constructed, argues Dumaresq, so that in the rape trial, men's and women's sexualities are placed within a specific set of discursive practices and conditions that do not operate elsewhere. This is why rape has to be analysed as sexual, Dumaresq argues, because to regard it as purely physical assault would be to miss the ways in which it has been linked with sexuality through a legal and media construction of the specific sexualities of the woman who has been raped (and the man who is likely to have raped).

The reading of sex as sexuality, therefore, has been an important one in the 'desexualisation' debate. However, this reading has led to different analyses. In the earlier of the texts reviewed here, sexuality was seen as a sexual desire, and it was argued that this was not what rape was about. It was argued that rape was divorced from mutual desire or pent-up male sexual need, and was, instead, about power. A contrast might be found in the work that has argued that sexual desire is involved in the motivation for rape (Barry, 1985). MacKinnon (1982, 1987, 1989), however, has argued that sex and power do not have to be so opposed. Rape is about both sex *and* power, because the two are interconnected in the way male sexuality is constructed and experienced by men. The experience of being powerful is part of being a man and of male sexuality (which MacKinnon regards as inseparable), and expressing that power through violent intrusion is experienced as sexually arousing. The third way in which sex-as-sexuality is taken up in the debate has been through an analysis of media and legal discourses on rape. Dumaresq (1981) regards rape as sexual because the ways in which the crime of rape is defined by the media and the law relies in practice upon a construction of male and female sexualities specific to rape. Rape has only 'really' taken place (according to media and legal discourses) when the complainant and the accused embody a certain female sexuality and a certain male sexuality respectively. This is therefore a different approach to arguing that sexuality is what rape is 'about'.

iii) Sex as Gender

The third important meaning that the term sex is given is equivalent to gender. As discussed above, this is why Plaza argues that rape is about sex. For Plaza rape is sexual because it opposes men and women, and because it is 'about' the ways in which masculine will act upon feminine within the present power relations. This is even the case, Plaza argues, when a man rapes another man, because in the process the raped man is feminised. He is acted upon as if he were feminine. Thus, I would submit, is a different usage from the 'sex' which Foucault argues rape is not about, and also different from but not incompat-

would conclude that the dualistic structure of the whole desexualisation debate should be abandoned.

IV A Triangle of Terms: Sex, Power and Violence

As mentioned in the introduction, the second major proposition of this article is that there are not just one or two, but three terms at issue here: sex, violence and power. The different configurations of this triangle of terms, and the meanings accorded them, are what differentiate perspectives. That is, the different meanings and theorising of these three terms lie behind the different positions taken up by the contributors to the 'desexualisation' debate. Thus what may have appeared to be a debate between two camps—those who thought rape should be 'desexualised' and those who did not—turns out to be more complex than this. The term 'sex' has been discussed at length above, but the argument of this section is not just that there are different meanings given to these terms but the way they are theorised *in relation to each other* leads to the various arguments advocated within the parameters of this debate. The different perspectives, furthermore, cannot be encompassed by two sides, a for and an against.

Foucault's thesis, as discussed above, can be seen as a strategy for avoiding or resisting the operations of power. Rape should be 'desexualised', his argument runs, because it has only hitherto been regarded as a sexual crime due to the operations of power/knowledge which have structured our understanding of the body. The genitalia are seen as 'sex' and are regarded as more important than other parts of the body. Thus to escape power, rape should be 'desexualised' and regarded as a crime of assault or violence like any other assault, such as a fist to the face.

Here, then, power is associated with the discourses that surround the body and 'create' sex and sexuality. As feminist critics have pointed out, power as it upholds a non-egalitarian social structure between men and women, is not explored by Foucault. Binary divisions in power are explicitly criticised in *The History of Sexuality* (1981). Thus when it comes to the issue of rape, the power to which Foucault refers is the power that is practiced through the operations of the discourses of the 'deployment of sexuality'. It is a productive and unstable power that produces our understanding of the body.

Sex, as discussed above, is seen by Foucault as a discursive label accorded certain parts of the anatomy. The third term—violence—is seen as the discursive solution, and is unproblematically used by Foucault to refer to direct physical force, as in a punch.

The feminist analysis theoretically closest to Foucault is that of Dumaresq (1981), who, ironically, would be placed in opposition to Foucault according to the present formulation of the desexualisation debate because she argues, *contra* Foucault, that rape should be seen as sexual. Yet Dumaresq shares Foucault's fundamental concern with the discursive constructions around sexuality. As the preceding section showed, her argument that rape is sexual is

based upon the contention that it is the site of a specific construction of sexuality: that of the rape victim (and the rapist).

The feminist analyses which would by the 'two camps' formulation be placed as if they were in agreement with Foucault—some of the early feminist texts that argued rape was a physical assault—present, as has been argued above, a very different analysis of rape. Power, for these writers, seems to be theorised in three different ways. First, power is theorised as a structure which is maintained between groups of people, allowing one group more opportunities and personal freedom than the other. Rape's connection with power is regarded as maintaining the power of men: it is a tool by which men's power is maintained (Griffin, 1971; Brownmiller, 1975). It is also regarded in some accounts, secondly, as the motivation behind rape. That is, the reason why a man rapes is to experience the power that he must have in order to make a woman do as he wishes (Russell, 1975).

A third way in which power is theorised in relation to rape is as the context in which rape takes place. That is, the fact that a man can rape a woman is an illustration of his power over her (and men's power over women). This is perhaps at its most clear where the man who rapes is known to the woman or is a member of her family so that even before the event, it is understood that she will obey his orders (as in most father/daughter relationships).

All three of these ways of theorising power in relation to rape have been advanced under the argument that rape is about power. Sex was dismissed by some early analyses as not what rape is about, because to say rape is about sex was taken to be advocating rape as the result of a male sexual need or as comparable with mutual desire. Violence was a term used, along with assault, in order to take the analysis of rape away from sex. Again, therefore, as with Foucault, 'violence' was a discursive solution. In stressing the violence of rape, the feminist analyses were using violence as a category of behaviour which denies the other person her autonomy by invading her body against her will, thereby denying her control over her own body. It violates her self (Peterson, 1977).

The term 'power' in these accounts is used differently, therefore, from the power in Foucault's argument. Power is seen to be a model of authority, and the ability to do as one pleases. It is, furthermore, embodied as opposed to formed within discourse. Thus the power that Foucault wishes to escape is not the same sort of power that the feminist analyses highlighted through their analyses. As argued above, nor is the term 'sex' used in the same way. The relation between sex and power is therefore very different in Foucault's writings from the relation in these feminist analyses.

The discursive 'solution' of using the term violence, therefore, does connect Foucault to these writers, but with a different aim and with different theoretical analyses behind it. Foucault is attempting to escape power, the power of the deployment of sexuality, whereas the feminist accounts are attempts to highlight power, in any of the three forms in which it is theorised as what rape is 'about'.

'camp' to them within a dual camp structure. The violence of rape is not denied by Plaza, but her insistence that rape be regarded as sexual reveals the limitations of the term 'violence' as a discursive solution for feminism. It cannot convey the full feminist analysis of rape, and carries the danger of being misread as a denial of the most basic feminist argument about rape: that it is about the social relations between men and women.

Articulating feminist analyses is also a priority of MacKinnon's writings on rape. She argues that the term 'violence against women' hides the perspectives that feminists hold about the interrelations between sexuality and power (MacKinnon, 1987: 86). Power, sex and violence are theorised by MacKinnon as they relate and interact at the site of 'normal' male sexuality. This then forms the context for the analysis of rape. MacKinnon's arguments respond to what has been termed here the 'discursive solution' of using the term violence by retheorising the relationship between power and sex. For MacKinnon the three ways in which power has been seen to be relevant to rape are correct, but do not discount the argument that rape is about sex, for once sex is seen as interwoven with male power, the two cannot be so separated. MacKinnon argues that male sexuality is such that the exercise of power through violence is sexually arousing. This analysis leads her to argue that "to the extent that coercion has become integral to male sexuality, rape may even be sexual to the degree that, and because, it is violent." (1989: 173). This inter-relation between the triangle of terms changes the debate, therefore, through an analysis which refuses to 'take sides' as the debate had been set up.

There are therefore, several different configurations between the terms sex, power and violence. The first two of these terms are particularly difficult because they are utilised so differently, thereby multiplying the possible analyses between the terms. This section has argued that the different ways in which the three terms are understood in relation to each other is what differentiates perspectives. Thus the arguments within the desexualisation debate stem from different configurations of the triangle of terms, and from the different strategies that writers have adopted as political solutions, and *not* from their position either side of a fence that has been set up as dividing those who argue rape is about sex from those who argue it is not (or that it is instead about violence). This understanding of the debate suggests, therefore, that such a fence is a barrier to understanding the different positions, and consequently, that such a framework should no longer be accorded this debate.

V Conclusion

In conclusion, therefore, it would seem that the dualistic structure of the present formulation of the 'desexualisation' question is no longer helpful to an appreciation of the different perspectives that have been presented within the

one aspect, but it is clear that this disagreement was not straightforwardly between Foucault and feminism, for it has resonances with debates among feminists. The argument of this article has been presented along two directions. First, it has been argued that the term 'sex' around which the debate ostensibly takes place, has a number of different meanings. This leads, moreover, to a situation in which writers who are placed in opposition to each other may not have such a different analysis of rape, but are merely emphasising different aspects of it in answer to the question 'is rape about sex?' through the meaning they give to 'sex'. Conversely, writers who are placed on the same side as each other may be using different meanings of the term sex, so that the argument that rape is about sex, for example, can marry very different analyses. Secondly, it has been argued that there are not one or two but three pivotal terms of importance to this debate: sex, power and violence. It is through an understanding of the ways in which the different contributors map their analyses onto this triangle of terms that clarification of the arguments of the 'desexualisation' of rape debate is likely to be at its easiest.

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Notes

- 1 Foucault also seems to be making a further suggestion: that rape might become a civil rather than a criminal offence, so that instead of criminal prosecution of the perpetrator, women would claim compensation after having been raped. In this article, the discussion revolves around just the first suggestion, that of punishing rape as a physical and not a sexual assault.
- 2 Marine Zecca is introduced as 'collaborator of David Cooper' who is a doctor and psychiatrist.
- 3 It should be noted that Plaza takes Foucault to be advocating the legal desexualisation of rape, whereas, in my reading, it remains ambiguous as to whether he is actually recommending the change or just presenting it as a dilemma for his theoretical point of view. For the purposes of this article, however, it has been supposed that Foucault did give weight to 'desexualisation' as a political strategy.

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